Supreme Court, U. S.
FILED
DEC 19 1979
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-961

AMBASSADOR COLLEGE,
Petitioner,

vs.

SALLY J. GOETZKE,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

W. WARREN PLOWDEN, JR.
ERIC D. GRIFFIN, JR.
500 First National Bank Building
Macon, Georgia 31201
BEN B. MILLS, JR.
323 South Grant Street
Fitzgerald, Georgia 31750
Attorneys for Petitioner

E. L. MENDENHALL, INC., 926 Cherry Street, Kansas City, Mo. 64106, (816) 421-3030

TABLE OF CONTENTS

OPINIONS BELOW 1
JURISDICTION 2
QUESTION PRESENTED 2
CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED 2
STATEMENT OF THE CASE 3
REASONS FOR GRANTING THE WRIT 7
CONCLUSION 19
APPENDIX A1

Table of Authorities

CASES

Bates v. City of Little Rock, 361 U.S. 516 (1960) 8, 12
Britt v. Superior Court of San Diego County, 20 Cal. 3d 844, 574 P.2d 766, 143 Cal. Rptr. 695 (1978) 8, 14
Buckley v. Valeo, 424 U.S. 1 (1976) 7, 12
Bursey v. United States, 466 F.2d 1049 (9th Cir. 1972) .. 9
Carey v. Hume, 492 F.2d 631 (D.C. Cir. 1974) 13
Cousins v. Wigoda, 419 U.S. 477 (1975) 7
Dorsey v. Academy Moving and Storage, Inc., 423 F.2d 858 (5th Cir. 1970) 18
Garland v. Torre, 259 F.2d 545 (2nd Cir. 1958) 13
Gibson v. Florida Legislative Investigation Committee, 372 U.S. 539 (1963) 8
Hovey v. Elliot, 167 U.S. 409 (1897) 18
International Union v. National Right to Work Legal Defense and Education Foundation, Inc., 590 F.2d 1139 (D.C. Cir. 1978) 13
Kedroff v. St. Nicholas Cathedral, 344 U.S. 94 (1952) 7
NAACP v. Alabama, 357 U.S. 449 (1958) 7, 8, 11
NAACP v. Button, 371 U.S. 415 (1963) 7

National Hockey League v. Metropolitan Hockey Club, Inc., 427 U.S. 639 (1976) 18
Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976) 7
Silkwood v. Kerr-McGee Corp., 563 F.2d 433 (10th Cir. 1977) 13
Societe Internationale pour Participations Industrielles et Commerciales v. Rogers, 357 U.S. 197 (1958) 18
Surinach v. Pesquera de Busquets, 604 F.2d 73 (1st Cir. 1979) 10, 11
U. S. v. Ballard, 322 U.S. 78 (1944) 6

CONSTITUTION, STATUTES AND RULES

U. S. Const., amend. I ..... passim
U. S. Const., amend. XIV, §1 2
Georgia Civil Practice Act:
Section 26, Ga. Code §81A-126 6
Section 33, Ga. Code §81A-133 2
Section 34, Ga. Code §81A-134 2
Section 37, Ga. Code §81A-137 2
28 U.S.C. §1257(3) 2
Supreme Court Rule 23(f) 5

OTHER AUTHORITIES

Hester, *Church Support for Higher Education: Issues of Survival and Purpose*, 20 Journal of Church and State 451, 452-53 (1978) 15
Note, *The Emerging Deterrence Orientation in the Imposition of Discovery Sanctions*, 91 Harv. L. Rev. 1033 (1978) 18
TRIBE, AMERICAN CONSTITUTION LAW, 875-76 (1978) 16
The Atlanta Constitution, Nov. 9, 1979, at 1, col. 1 15

In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-.....

AMBASSADOR COLLEGE,
Petitioner,

vs.

SALLY J. GOETZKE,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

Ambassador College respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of Georgia in the above-entitled case.

OPINIONS BELOW

The opinion of the Supreme Court of Georgia (App. A34) is not yet reported. The order of the Supreme Court of Georgia denying rehearing (App. A40) is not reported. The judgment of the Superior Court of Ben Hill County, Georgia (App. A30) is not reported.

JURISDICTION

The judgment of the Supreme Court of Georgia was entered on September 7, 1979. The order of the Supreme Court of Georgia denying a timely petition for rehearing was entered on September 25, 1979. The jurisdiction of this Court is invoked under 28 U.S.C. §1257(3).

QUESTION PRESENTED

Whether the right of associational privacy guaranteed by the First Amendment protects a church-related college against the compulsory disclosure in civil litigation of the identity of contributors and the amounts of its income and salaries paid to officers and trustees.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

U. S. Const. amend. I:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; * * * or the right of the people peaceably to assemble * * *."

U. S. Const. amend. XIV, §1:

"* * * nor shall any state deprive any person of life, liberty, or property, without due process of law * * *."

Georgia Civil Practice Act, §§33, 34 and 37, Ga. Code §§81A-133, 134 and 137. (pp. A41-A49).

STATEMENT OF THE CASE

Respondent Sally J. Goetzke sued Ambassador College,[1] Joseph E. Pope and Willard F. McMillan seeking to cancel and have set aside certain deeds to real estate located in Ben Hill County, Georgia, including a deed and real estate trust agreement executed by her mother, Madeline Hopkins Shaffer, to Joseph E. Pope and Willard F. McMillan as Trustees of Ambassador College.

The deed and real estate trust agreement was executed on February 19, 1975.[2] Approximately three years later on June 8, 1978, Mrs. Shaffer died. Shortly thereafter, Pope and McMillan as Trustees conveyed the real estate in question to petitioner Ambassador College pursuant to the real estate trust agreement previously executed by Mrs. Shaffer.[3] Respondent sought the cancellation of the deeds in question on the grounds of mental incompetency, disparity of intellect, undue influence, *etc.* The theory of her complaint as it relates to the items of discovery in issue

---

1. Ambassador College is a non-profit California corporation. It was founded, is endowed and supported by, and trains the ministry of the Worldwide Church of God. Ambassador College has for many years published and distributed numerous booklets, articles, magazines and other religious and educational publications on behalf of the Worldwide Church of God, and produced and sponsored the World of Tomorrow radio and television programs on behalf of the Worldwide Church of God. The Board of Trustees of Ambassador College and virtually all, if not all, of the officers of Ambassador College are members of the Worldwide Church of God and insure that the college is at all times in harmony with and supported by the doctrines and teachings of said Church. The Department of Theology of Ambassador College is staffed by ordained ministers and members of the Worldwide Church of God and teaches the doctrine, interpretations, customs, traditions, practices, and policy of the Worldwide Church of God as the true way of life. (R. 78).

2. At the time she executed this instrument, Mrs. Shaffer was 52 years old. (R. 6).

3. The instrument executed by Mrs. Shaffer was filed for record on July 7, 1978. The quitclaim deeds were filed on August 11, 1978.

here was that Ambassador College had invaded the mind of Mrs. Shaffer through religious messages in such a way and to the extent that it was able to defraud Mrs. Shaffer and deprive her of her free will and substitute its will with regard to the execution of the deed and real estate trust agreement.[4]

Simultaneously with the filing of her complaint, respondent filed seventeen interrogatories and six requests for production of documents. Petitioner filed its answers and objections to plaintiff's First Interrogatories and Request for Production of documents, and it objected specifically to numbers 1, 2, 3, 5, and 12, and to portions of numbers 4 and 15.[5] It also objected to and failed to produce the documents sought in plaintiff's request for production number 6.[6] Petitioner first raised the federal questions advanced in this Petition in its Response to Plaintiff's

4. Respondent brought her suit in five counts seeking relief on the following grounds: (1) Diminished capacity to the extent Mrs. Shaffer did not have a clear and full understanding of the nature of her act; (2) Lack of ability to understand business transactions coupled with fraudulent misrepresentation and lack of consideration; (3) Establishment of a confidential relationship through religious messages to the extent of undue influence; (4) That the deed is unconscionable and unjust; and (5) The deed and trust agreement are testamentary in character.

5. The substance of the information sought and objected to in the interrogatories can be summarized as follows:

(1) The names and information as to *all* persons in Georgia who have conveyed property by deed or trust agreement to Ambassador College, or executed a will devising any property to Ambassador College.

(2) The amount of annual compensation paid to officers, directors and members of the Boards of Trustees of Ambassador College and the Worldwide Church of God.

(3) The gross receipts or revenues of Ambassador College for 1974, 1975, 1976 and 1977.

(4) The salary or compensation paid to Herbert W. Armstrong by Ambassador College and the Worldwide Church of God for the years 1974, 1975, 1976 and 1977.

6. This request sought production of copies of deeds, wills or other instruments conveying any interest in Georgia real estate to Ambassador College or the Worldwide Church of God.

Interrogatories and its Response to Plaintiff's Request for Production. As required by Rule 23(f) these documents are reproduced in the Appendix. (App. A1-A29).

Petitioner's objection and failure to answer the interrogatories and requests for production of documents was based on lack of relevancy and violation of First Amendment rights under the United States Constitution, the California Constitution, and the Constitution of the State of Georgia, including the rights of free exercise of religion and freedom of association.

Upon a motion by Respondent, the Superior Court of Ben Hill County entered an order requiring Petitioner, within thirty days, to answer the above enumerated interrogatories and requests for production of documents. Petitioner maintained its right to refuse to answer this discovery on constitutional grounds, and Respondent moved for imposition of sanctions including dismissal of Petitioner's answer and judgment in favor of Respondent on her complaint. The trial court entered an order[7] finding that Ambassador College had willfully failed and refused to comply with previous discovery orders, and ordered that Respondent have judgment against Petitioner for the relief prayed for in the complaint unless Petitioner filed answers and produced the documents within seven days.

Ambassador College continued to maintain its constitutional right to refuse to comply with the discovery order entered by the Superior Court of Ben Hill County, and on April 10, 1979, judgment was granted to Respondent providing the relief sought in her complaint and setting

7. Both before and after entry of this order, Petitioner asked for a certificate of immediate review to appeal from the order compelling discovery without having to first suffer sanctions and a judgment against it. (R. 140, 241). The first request was never passed upon by the trial court. The second was denied. (R. 242).

aside and cancelling the deed in question as a cloud on the title to the real property in dispute. (App. A30).

The Supreme Court of Georgia in an opinion entered September 7, 1979 affirmed the trial court. It first held that the information sought was within the scope of discovery allowed under §26 of the Civil Practice Act—that is, it "involved" the pending action because it sought to determine the mode of operation and tactics of the College in securing the execution of the deed and trust agreement. (App. A35). This is purely a question of the scope of discovery under Ga. Code 81A-126 and putting all other issues aside,[8] it may be assumed to be correct for the purpose of considering this Petition.

The Court then took up Petitioner's claim that discovery of the information sought would be improper because it impinged upon First Amendment freedoms relative to religion and association. However, rather than recognize and deal with the serious constitutional problem at hand, the Court treated Petitioner's objections as going to the *admissibility* of the information at trial rather than its *production* in the first place. (App. A36). This holding effectively ignored Petitioner's attempted invocation of a constitutional privilege. If the material can be discovered at all, the harm has been inflicted upon Ambassador College regardless of whether or not it is ever admitted in evidence at a subsequent hearing or trial on the issues joined in the pleadings.

8. These issues would include questions as to whether a basis exists under Georgia law to set aside a deed which was a gift flowing from "purported religious material and documents purportedly expressing religious messages. . ." (R. 7), and if any such claim exists, whether it also impinges upon First Amendment rights by attempting to recover property donated to a church-related college on the ground that it was fraudulently procured by means of false teachings and the like. Cf. *U. S. v. Ballard,* 322 U.S. 78 (1944). The case appeared to be heading in that direction when Respondent sought to discover in her third interrogatories whether any apocalyptic forecast by the president of Ambassador College had any effect on its level of contributions (R. 131-32), however, judgment was rendered against the Respondent before the issue was reached.

On September 25, 1979, the Georgia Supreme Court denied Petitioner's timely petition for rehearing, and this petition for a writ of certiorari followed.

REASONS FOR GRANTING THE WRIT

I.

The Decision Below Conflicts With Important First Amendment Principles Enunciated by This Court and Decisions of Lower Courts Applying Those Principles.

Although the Court has never recognized a right of association merely to protect group or communal experience as such, it has clearly recognized a right of association for the purpose of seeking goals independently protected by the First Amendment. *Buckley v. Valeo,* 424 U.S. 1 (1976); *Cousins v. Wigoda,* 419 U.S. 477 (1975); *NAACP v. Button,* 371 U.S. 415 (1963); *NAACP v. Alabama,* 357 U.S. 449 (1958). A particularly well-established instance of this right of associational freedom has been the recognition of the integrity and autonomy of religious associations. *Kedroff v. St. Nicholas Cathedral,* 344 U.S. 95 (1952); *Serbian Eastern Orthodox Diocese v. Milivojevich,* 426 U.S. 696 (1976).

This right of association enables persons to associate freely and *privately* in the exercise of First Amendment rights (such as supporting religious educational institutions) and the organizations they form to resist state instigated or compelled inquiries as to who are its members, what are the sources of its income, and to what end these

funds are expended. *NAACP v. Alabama, supra*;[9] *Bates v. City of Little Rock*, 361 U.S. 516 (1960); *Gibson v. Florida Legislative Investigation Committee*, 372 U.S. 539 (1963);[10] *Britt v. Superior Court of San Diego County*, 20 Cal. 3d 844, 574 P.2d 766, 143 Cal. Rptr. 695 (1978).[11] It is a violation of due process for a state to compel disclosure of such sensitive information absent a showing of compelling necessity. *NAACP v. Alabama, supra* at 466.

For over twenty years it has been settled constitutional law that any "state action which *may* have the effect of curtailing the freedom to associate is subject to the closest scrutiny." *NAACP v. Alabama, supra* at 461 (emphasis supplied). Nevertheless, Petitioner's claims received only

---

9. "This Court has recognized the vtial relationship between freedom to associate and privacy in one's associations. When referring to the varied forms of governmental action which might interfere with freedom of assembly, it said in *American Communications Assn. v. Douds, supra*, at 402: 'A requirement that adherents of particular religious faiths or political parties wear identifying arm-bands for example, is obviously of this nature.' Compelled disclosure of membership in an organization engaged in advocacy or particular beliefs is of the same order. Inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs." 357 U.S. at 462.

10. "The strong associational interest in maintaining the privacy of membership lists of groups engaged in the constitutionally protected free trade in ideas and beliefs may not be substantially infringed upon such a slender showing as here made by the respondent." 372 U.S. at 556.

11. "As we have explained, it has been clear for over two decades that the First Amendment provides substantial protection of an individual's interest in associational privacy and that it places severe restrictions on state-compelled disclosure of private affiliations and activities. The present decision simply recognizes that these firmly established constitutional precepts cannot be ignored merely because the issue of compelled disclosure arises in the context of litigation discovery; in this realm, as in all others, such disclosure of confidential associational affiliations and activities must be justified by a compelling state interest and must be precisely tailored to avoid undue infringement of constitutional rights." 574 P.2d at 779.

scant attention by the Georgia Supreme Court. It noted Petitioner's objections but failed to discuss in any meaningful way the significance of this developing body of First Amendment law to the issues urged by Petitioner. Its decision therefore conflicts with First Amendment principles enunciated by this Court—not in the usual sense of a direct holding to the contrary—but because it virtually ignores the problem put before it.

More specifically it raises several important questions concerning the scope and application of the right of associational privacy. To the extent these issues were dealt with at all by the Georgia court, its treatment is in conflict with prior cases decided by this Court and other lower courts.

A. Are associational relationships of religious organizations presumptively entitled to First Amendment protection or must the entity asserting the right overcome some threshold substantiation requirement?

In the one paragraph which the Georgia Supreme Court did devote to the question presented here, it assumed "that this appellant's (constitutional) objections were timely made and substantiated . . . ." (App. A36). Exactly what sort of "substantiation" it contemplated was, of course, left for another day, but it appears reasonable to assume that the Court had in mind some sort of showing by Petitioner that disclosure of this sensitive information would infringe on its rights of association and free exercise of religion. The requirement that Petitioner make any such showing to invoke First Amendment protection conflicts with decisions of the First and Ninth Circuits.

In *Bursey v. United States*, 466 F.2d 1059 (9th Cir. 1972) questions were put to grand jury witnesses concern-

ing membership in the Black Panther Party, persons who worked on its newspaper, and the source of funds for travel to Algeria. The government tried to sustain an order compelling the witnesses to answer on the theory that there was a presumption of nonprotection applied to the associational interests in question and that the witnesses were obliged to overcome it in order to rely on the First Amendment. The Ninth Circuit held:

> "The government has it backwards. All speech, press, and associational relationships are presumptively protected by the First Amendment; the burden rests on the Government to establish that the particular relationships are outside its reach." 466 F.2d at 1082.

In a very recent case dealing specifically with church-related schools, the First Circuit considered an attempt by the Department of Consumer Affairs to investigate various aspects of the cost of operating parochial schools in Puerto Rico. *Surinach v. Pesquera de Busquets,* 604 F.2d 73 (1st Cir. 1979).

The District Court's conclusion that the Department could discover this information was based in part on its conclusion that the church had not shown sufficient governmental intanglement so as to penalize or hinder religious practices. The First Circuit reversed and held:

> "It is not the obligation of the schools to prove as a precondition for relief at this time that the precise scenario, which hardly can be called speculative, in fact will unfold. To the contrary, in the sensitive area of First Amendment religious freedoms, the burden is upon the state to show that implementation of a regulatory scheme will *not* ultimately infringe upon

> and entangle it in the affairs of a religion to an extent which the Constitution will not countenance." 604 F.2d at 75-76.

B. Does the protection against disclosure apply when the adverse party is merely gathering information or only if some later use is made of it in the litigation?

Petitioner vigorously argued below that the constitutional privilege it asserted prohibited the *discovery* of this sensitive material in the absence of a showing of compelling necessity by Respondent. Nevertheless, the Georgia Supreme Court held that these objections relate primarily to admissibility rather than discovery. *Ergo,* since inadmissibility alone is not a proper ground for resisting discovery, it was proper to compel answers and grant the sanction imposed for noncompliance. (App. A36).

This holding conflicts with this Court's decision in *NAACP v. Alabama, supra.* The state apparently attempted to argue there that there had been no use of the information sought and no direct action under the contempt order to infringe upon the NAACP's right of association. However, the Court held that it is the compelled disclosure and not any subsequent use in legal proceedings which implicates First Amendment values. The purpose of the rule is to prevent the *possibility* of intimidation, harassment and the like flowing from the public disclosure of membership in the organization. *Id.* at 461-63.

This holding is also in direct conflict with the decision of the First Circuit in *Surinach.* That court characterized the district court's distinction between information gathering and its later use as being "both artificial and constitutionally unsound." 604 F.2d at 75. It went on to observe that the gathering of this information was not viewed as

an end in itself and that no rational end use of it had been suggested which would not infringe on First Amendment rights.[12]

C. Is the state's interest in the ascertainment of truth in civil litigation of such a magnitude that merely showing relevance will satisfy the compelling interest test?

Although not stated in precisely these terms, the Georgia court's decision can be read as holding that relevance is the only question which must be considered when ruling on constitutional objections to the discovery of information protected by the right of associational privacy. Although the objections were clearly raised in the trial court and were assumed to be timely and substantiated, relevance was the only burden imposed upon Respondent as a condition to securing an order compelling discovery. Since there is no reference in the court's opinion to the rule that compelling necessity must be shown to overcome First Amendment protection, one can only assume the Georgia court was rejecting this rule.

This Court has held that although the right of associational privacy is not absolute, it can be overcome only upon a showing by the state of a subordinating interest which is compelling. *Buckley v. Valeo,* 424 U.S. 1 (1976); *Bates v. City of Little Rock, supra.* However, the response of the lower federal and state courts as to how the party seeking discovery goes about showing this compelling interest has been varied and confusing. As noted, the Georgia

12. It is obvious from the record that had Petitioner disclosed the names of any persons in Georgia who have donated property, they would have been contacted and questioned (or harassed) concerning the extent of their agreement with the religious teachings of the Worldwide Church of God and whether that in any way influenced their making the donation.

Supreme Court has seemingly held that a showing of relevance will suffice.

Specific steps have emerged in lower federal court decisions for determining whether a civil litigant has made a sufficient showing of necessity to outweigh First Amendment interests. These include:

(1) Can the information be discovered through alternative sources and has the party seeking disclosure made reasonable attempts to obtain the information elsewhere;

(2) Does the information go to the heart of the lawsuit;

(3) Whether the information is of certain relevance; and,

(4) What type of controversy is involved.

See *International Union v. National Right to Work Legal Defense and Education Foundation, Inc.,* 590 F.2d 1139 (D.C. Cir. 1978); *Silkwood v. Kerr-McGee Corp.,* 563 F.2d 433 (10th Cir. 1977); *Carey v. Hume,* 492 F.2d 631 (D.C. Cir. 1974); *Garland v. Torre,* 259 F.2d 545 (2nd Cir. 1958).

This four-pronged test was developed in cases which clearly recognized the First Amendment problems at hand and sought to deal with them by requiring that the party seeking the discovery meet a more exacting test of necessity. However, it focuses on only one side of the question, the need of the party seeking the information to prosecute his case. Presumably, if the information sought was relevant, went to the heart of the lawsuit and could not possibly be obtained elsewhere, it would be ordered produced regardless of the impact on the First Amendment rights of the opposing party.

On the other hand, the California Supreme Court in *Britt v. Superior Court of San Diego County, supra,* began at this point by recognizing the importance of the state interest in facilitating ascertainment of the truth in civil cases, but went further and specifically required a consideration of the effect discovery would have on the party seeking protection. It notes that breaching associational privacy can often deter constitutionally protected activity as much as a direct prohibition. This is particularly true in the civil discovery context where the other side may use the information to harass an opponent. 574 P.2d at 774. That being the case, the moving party must show a compelling state interest over and above a strong showing of need and any discovery then ordered must be precisely tailored to avoid undue infringement on First Amendment rights.

If certiorari is granted, we will argue that as a minimum this Court should impose a national standard of strong and overwhelming need as in the case of the federal decisions cited above. Assuming such a standard is met, the party seeking discovery should then be required to demonstrate that disclosure would have slight if any deterrent effect on the exercise of First Amendment rights. Such a test would necessarily entail the possibility of the conclusion in a particular case that the strongest possible showing of need will not be sufficient to justify or outweigh the chilling effect on First Amendment rights that disclosure would produce.

II.

The Decision Below Raises Significant Questions Concerning the Rights of Churches and Their Related Educational Institutions to Solicit Funds.

Until recently the decline of church-related education in this country had been steady and perceptible. In the

twentieth century, the rise of positivism undercut the notion of non-scientific values in significant ways, and encouraged technical inquiry to the exclusion of broad philosophical and religious studies.[13]

However, in the last few years there has been a demonstrable and growing interest in private, value-oriented education, including primarily church-related universities and colleges, as a viable alternative to the large, state-supported institutions. The development of personal values and character has begun to displace the development of technical expertise without more in our national priorities. Under these circumstances the implications of the instant case are broader than might appear from a cursory glance.[14]

Private fund-raising is, and must be, the primary source supporting the resurgence of private education in this country. Deferred giving programs by which individuals make donations in the form of trusts reserving income for life or bequests in a will constitute a main

---

13. "Church-sponsored higher education began as an enterprise to prepare a learned ministry and to educate students according to the values of a religious culture. This idea of the mission of higher education was the only conception of college and university education for more than two centuries in America. Today this religious conception of the mission of the college and university has been replaced by new secular conceptions. * * * The shift in economic support from church-related to tax-supported schools has been stimulated by an industrial, capitalist society which has needed technically trained persons to keep the wheels of business and industry moving. * * * The shift of values and economic investment toward state-supported education has meant that many church-related schools now suffer from inadequate staffing, facilities, and program funds." Hester, *Church Support for Higher Education: Issues of Survival and Purpose,"* 20 Journal of Church and State 451, 452-53 (1978).

14. The principles at issue in this case involve considerably more in terms of institutions affected and funds in jeopardy than Ambassador College and a house and lot in Ben Hill County, Georgia. For example, Emory University in Atlanta was the recent recipient of $100 million worth of Coca-Cola stock which was apparently the largest such single gift to any educational institution. The Atlanta Constitution, Nov. 9, 1979, at 1, col. 1.

fund-raising approach for many institutions. The type of wholesale, pervasive discovery of marginally relevant, highly sensitive data sought in this case, if allowed to go unchecked, will have profound effects on the fund-raising capabilities and thus the life of many small church-related colleges and universities.[15]

It is improbable that any church, be it Baptist, Methodist, Catholic, or as here, the Worldwide Church of God, would be willing to turn over a list of persons who had bequeathed property to the church or church-related school, or divulge financial information of questionable relevance about church officers. Any religious society would consider that information confidential and would seek to assert not only its own rights under the First Amendment, but also the rights of their donors to make gifts in complete confidence.

It seems highly unlikely that the Georgia courts would have used the ultimate sanctions applied in this case had the defendant been an established, church-related school such as Mercer University in Macon (Baptist) or Emory University in Atlanta (Methodist). If such treatment were employed, it would lead in case after case to automatic judgments for plaintiffs since churches and schools would surely refuse to allow harassment of their donors by these means. On the other hand, if it be assumed that such heavy-handed and arbitrary tactics would not be permitted in cases involving established or more conventional

15. "Not only would such (a situation amount to) open season on churches and their followers; it could at the same time make at least some religious groups resist the very attempt to solicit donations, while inducing others—those too desperate for resources to refrain from financing appeals—to rigidify their doctrines and freeze or at least conceal their own evolution for fear that doctrinal change, ordinarily immune from censorship, could trigger refund-seeking litigation." TRIBE, AMERICAN CONSTITUTION LAW, 875-76 (1978).

religions, the instant case represents a violation of basic First Amendment protection because of its arbitrary handling of an unpopular and little-known religious organization within the state.

Either way, this court should grant the writ and establish in unmistakable terms that absent a showing of overwhelming necessity and compelling state interest, the First Amendment protects *all* churches and their related educational institutions against the compelled disclosure of the types of information sought here.

III.

The Result Reached Below Is Unjust, Plainly Wrong, and Unduly Harsh in Its Result.

Although this court does not exist merely to correct errors in lower court decisions, we request that the unusually harsh result reached below be considered along with the other reasons urged for granting the writ.

Petitioner was subjected to ever-expanding discovery requests seeking voluminous amounts of sensitive, confidential information about the inner workings of Ambassador College and the Worldwide Church of God. It responded by filing its objections and requesting a protective order from the trial court. The only relief forthcoming was based on the ground that the Respondent's requests for information were overly broad (R. 129-30), but this proved to be short-lived when Respondent filed second interrogatories (R. 122) limiting the period of time covered in the request to eight years. Moreover, her third interrogatories (R. 131) requested information on specific religious beliefs such as apocalyptic forecasts and the second coming of Christ.

On the other hand, the record reveals no attempts by Respondent to conduct any discovery specifically focused on the instrument in question. For instance, the persons who witnessed the instrument are both residents of Ben Hill County, but neither was deposed to find out what information they had about any irregularities or overreaching which may have occurred. She never sought to identify any official of the college or church who has any *specific* knowledge about the instrument in question.

Petitioner filed detailed objections pointing out all its objections to the requested discovery. It filed a motion for a protective order, and twice sought interlocutory appeals. It was finally forced to choose between surrendering its constitutional rights and submitting to an order applying the ultimate sanction against it.[16] It has yet to have any court specifically address and decide the merits of the issues it raised.

State courts should not be free to compel discovery of sensitive information within the zone of protection afforded by the First Amendment with no inquiry into the important interests involved. Without Supreme Court guidance in this area, states such as Georgia will remain free

16. The imposition of the dismissal sanction in this case raises serious questions of due process under the Fourteenth Amendment. "The recognition that due process limits the use of sanctions foreclosing arguments on the merits has deep historical roots." Note, *The Emerging Deterrence Orientation in the Imposition of Discovery Sanctions*, 91 Harv. L. Rev. 1033, 1041 (1978). See *Societe Internationale pour Participations Industrielles et Commerciales v. Rogers*, 357 U.S. 197 (1958); *Hovey v. Elliot*, 167 U.S. 409 (1897); *Dorsey v. Academy Moving and Storage, Inc.*, 423 F.2d 858 (5th Cir. 1970). Although the imposition of this ultimate sanction is arguably easier after *National Hockey League v. Metropolitan Hockey Club, Inc.*, 427 U.S. 639 (1976), the entering of judgment against the defendant in a case such as ours surely exceeds the bounds of due process. There was no bad faith or wilful refusal to cooperate with proper discovery in this case, but only a vain attempt to assert a constitutional sanction to the application of the discovery statute.

to compel discovery of a whole range of presumptively privileged information concerning religious organizations. The First Amendment promises more than this. The handling of this case by the Georgia courts warrants review.

CONCLUSION

We respectfully urge the Court, for all the reasons set forth above, to grant a writ of certiorari and to reverse the decision below.

Respectfully submitted,

W. WARREN PLOWDEN, JR.
ERIC D. GRIFFIN, JR.
500 First National Bank Building
Macon, Georgia 31201
BEN B. MILLS, JR.
323 South Grant Street
Fitzgerald, Georgia 31750
Attorneys for Petitioner

APPENDIX

IN THE SUPERIOR COURT OF BEN HILL COUNTY,
STATE OF GEORGIA
CIVIL ACTION FILE NO. 1615

SALLY J. GOETZKE,
Plaintiff,

vs.

AMBASSADOR COLLEGE, a California corporation;
JOSEPH E. POPE: and WILLARD F. McMILLAN,
Defendants.

DEFENDANT AMBASSADOR COLLEGE'S RESPONSES TO PLAINTIFF'S INTERROGATORIES TO AMBASSADOR COLLEGE

To: JOHN T. CROWLEY, JR., attorney for plaintiff, SALLY J. GOETZKE:

Defendant Ambassador College hereby responds to the interrogatories propounded by plaintiff upon this defendant. As to all interrogatories, defendant has not yet completed its investigation of the case, and the investigation and discovery are continuing.

Defendant first states a blanket objection to all the interrogatories in that the complaint in this action is vague and fails to state a cause of action, and, therefore, it is impossible to definitively determine whether or to what extent, if any, the individual interrogatories are relevant or calculated to lead to the discovery of admissible evidence.

INTERROGATORY No. 1:

State the names, addresses and phone numbers, of all persons known to you who have executed a deed and real

estate trust agreement similar to complaint Exhibit A under which you were named as a beneficiary or remainderman with regard to any interest in real property located within the State of Georgia.

(a) With regard to each such individual, state whether said individual executed said document as a settlor, grantor, or trustee.

RESPONSE TO INTERROGATORY NO. 1:

Defendant objects to this interrogatory on the following grounds:

(a) That it is irrelevant to the subject matter of this action and is not reasonably calculated to lead to the discovery of admissible evidence.

(b) That it is in violation of this defendant's rights, and the rights of those affiliated or associated with this defendant, of free exercise of religion and of the prohibition against the establishment of religion under the First Amendment of the U.S. Constitution, under Article I, Section 4 of the California Constitution and under Article I, Section 1, Paragraphs II and III of the constitution of the State of Georgia, in that said interrogatory is calculated to lead to annoyance, embarrassment, oppression, harassment and undue burden of defendant and defendant's associates and affiliates, because of defendant's religion.

(c) That it is in violation of the rights of defendant, and those affiliated and associated with defendant, to freedom of association under the First Amendment of the United States Constitution and under Article I, Section 10 of the California Constitution, because of defendant's relationship to the Worldwide Church of God.

(d) That it is in violation of the rights of defendant, and those affiliated and associated with defendant, of pri-

vacy under (1) the penumbra right of privacy of freedom of association and of religion and of prohibition against establishment of religion under the First Amendment of the United States Constitution, (2) of the penumbra right of privacy of people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures under the Fourth Amendment of the U.S. Constitution, (3) of the penumbra right of privacy under the Ninth Amendment of the U.S. Constitution, (4) the inalienable right of privacy under Article I, Section 1 of the Constitution of the State of California and (5) of the common law right of privacy as construed by the courts.

(e) That it is in violation of this defendant's rights, and those affiliated and associated with defendant, under the Fourth Amendment of the U.S. Constitution, under Article I, Section 13 of the California Constitution, and Article I, Section I, Paragraph X of the Constitution of the State of Georgia of people to be secure in their persons, papers and effects, and to be free from unreasonable searches and seizures.

(f) That it is in violation of the rights of defendant, and of those affiliated and associated with defendant under 42 U.S.C., Section 1983.

(g) That it is in violation of the defendant's inalienable rights, and those affiliated and associated with defendant, under Article I, Section 1 of the California Constitution and Article I, Section I, Paragraph I of the Constitution of the State of Georgia.

(h) That plaintiff's alleged causes of action are a sham and this interrogatory is intended to cause defendant annoyance, embarrassment, oppression, and undue burden and expense so as to invoke a settlement, all of which is an abuse of this court's process.

(i) That if Section 33 of the Georgia Civil Practice Act (Ga. Code Ann. §81A-133) is construed to compel defendant to provide the information requested by this interrogatory, said code section, as construed, is unconstitutional in violation of the state and federal constitutional provisions cited in the foregoing objections.

INTERROGATORY NO. 2:

List the names, addresses, and phone numbers of all persons from whom you or any trustees holding for your benefit have received any interest in real property located within the State of Georgia.

RESPONSE TO INTERROGATORY NO. 2:

Defendant objects to this interrogatory on the following grounds:

(a) That it is irrelevant to the subject matter of this action and is not reasonably calculated to lead to the discovery of admissible evidence.

(b) That it is in violation of this defendant's rights, and the rights of those affiliated or associated with this defendant, of free exercise of religion and of the prohibition against the establishment of religion under the First Amendment of the U.S. Constitution, under Article I, Section 4 of the California Constitution, and under Article I, Section 1, Paragraphs II and III of the constitution of the State of Georgia, in that said interrogatory is calculated to lead to annoyance, embarrassment, oppression, harassment and undue burden of defendant and defendant's associates and affiliates, because of defendant's religion.

(c) That is in violation of the rights of defendant, and those affiliated and associated with defendant, to freedom of association under the First Amendment of the

United States Constitution and under Article I, Section 10 of the California Constitution, because of defendant's relationship to the Worldwide Church of God.

(d) That it is in violation of the rights of defendant, and those affiliated and associated with defendant, of privacy under (1) the penumbra right of privacy of freedom of association and of religion and of prohibition against establishment of religion under the First Amendment of the United States Constitution, (2) of the penumbra right of privacy of people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures under the Fourth Amendment of the U.S. Constitution, (3) of the penumbra right of privacy under the Ninth Amendment of the U.S. Constitution, (4) the inalienable right of privacy under Article I, Section 1 of the constitution of the State of California and (5) of the common law right of privacy as construed by the courts.

(e) That it is in violation of this defendant's rights, and those affiliated and associated with defendant, under the Fourth Amendment of the U.S. Constitution, under Article I, Section 13 of the California Constitution and Article I, Section I, Paragraph X of the Constitution of the State of Georgia of people to be secure in their persons, papers and effects, and to be free from unreasonable searches and seizures.

(f) That it is in violation of the rights of defendant, and of those affiliated and associated with defendant under 42 U.S.C., Section 1983.

(g) That it is in violation of the defendant's inalienable rights, and those affiliated and associated with defendant, under Article I, Section 1 of the California Constitution and under Article I, Section I, Paragraph I of the Constitution of the State of Georgia.

(h) That plaintiff's alleged causes of action are a sham and this interrogatory is intended to cause defendant annoyance, embarrassment, oppression, and undue burden and expense so as to invoke a settlement, all of which is an abuse of this court's process.

(i) That if Section 33 of the Georgia Civil Practice Act (Ga. Code Ann. §81A-133) is construed to compel defendant to provide the information requested by this interrogatory, said code section, as construed, is unconstitutional in violation of the state and federal constitutional provisions cited in the foregoing objections.

INTERROGATORY NO. 3:

List the names and last address for each person who by will devised to you or to any trustee or other person holding for your benefit any interest contingent or otherwise, in any real property located in the State of Georgia.

RESPONSE TO INTERROGATORY NO. 3

Defendant objects to this interrogatory on the following grounds:

(a) That it is irrelevant to the subject matter of this action and is not reasonably calculated to lead to the discovery of admissible evidence.

(b) That it is in violation of this defendant's rights, and the rights of those affiliated or associated with this defendant, of free exercise of religion and of the prohibition against the establishment of religion under the First Amendment of the U.S. Constitution, under Article I, Section 4 of the California Constitution, and under Article I, Section 1, Paragraphs II and III of the constitution of the State of Georgia, in that said interrogatory is calculated to lead to annoyance, embarrassment, oppression,

harassment and undue burden of defendant and defendant's associates and affiliates, because of defendant's religion.

(c) That it is in violation of the rights of defendant, and those affiliated and associated with defendant, to freedom of association under the First Amendment of the United States Constitution and under Article I, Section 10 of the California Constitution, because of defendant's relationship to the Worldwide Church of God.

(d) That it is in violation of the rights of defendant, and those affiliated and associated with defendant, of privacy under (1) the penumbra right of privacy of freedom of association and of religion and of prohibition against establishment of religion under the First Amendment of the United States Constitution, (2) of the penumbra right of privacy of people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures under the Fourth Amendment of the U.S. Constitution, (3) of the penumbra right of privacy under the Ninth Amendment of the U.S. Constitution, (4) the inalienable right of privacy under Article I, Section 1 of the constitution of the State of California and (5) of the common law right of privacy as construed by the courts.

(e) That it is in violation of this defendant's rights, and those affiliated and associated with defendant, under the Fourth Amendment of the U.S. Constitution, under Article I, Section 13 of the California Constitution and Article I, Section I, Paragraph X of the Constitution of the State of Georgia of people to be secure in their persons, papers and effects, and to be free from unreasonable searches and seizures.

(f) That it is in violation of the rights of defendant, and of those affiliated and associated with defendant under 42 U.S.C., Section 1983.

(g) That it is in violation of the defendant's inalienable rights, and those affiliated and associated with defendant, under Article I, Section 1 of the California Constitution and Article I, Section I, Paragraph I of the Constitution of the State of Georgia.

(h) That plaintiff's alleged causes of action are a sham and this interrogatory is intended to cause defendant annoyance, embarrassment, oppression, and undue burden and expense so as to invoke a settlement, all of which is an abuse of this court's process.

(i) That if Section 33 of the Georgia Civil Practice Act (Ga. Code Ann. §81A-133) is construed to compel defendant to provide the information requested by this interrogatory, said code section, as construed, is unconstitutional in violation of the state and federal constitutional provisions cited in the foregoing objections.

INTERROGATORY NO. 4:

State the names and addresses of all officers, directors, or members of any Board of Trustees of Ambassador College, and for each such officer, director, or trustee, list the compensation paid annually to each.

RESPONSE TO INTERROGATORY NO. 4:

The names and addresses of the officers and Board of Directors of Ambassador College are as follows:

Herbert W. Armstrong, Chancellor, Trustee and Chairman of the Board
300 W. Green St.
Pasadena, CA 91123

Raymond F. McNair, Deputy Chancellor and Trustee
300 W. Green St.,
Pasadena, CA 91123

Stanley R. Rader, Treasurer and Trustee
300 W. Green St.
Pasadena, CA 91123

Ralph K. Helge, Secretary
300 W. Green St.
Pasadena, CA 91123

Gene M. Michel, Assistant Secretary
300 W. Green St.
Pasadena, CA 91123

Dibar K. Apartian, Trustee
300 W. Green St.
Pasadena, CA 91123

Elbert Atlas, Trustee
300 W. Green St.
Pasadena, CA 91123

Frank Brown, Trustee
300 W. Green St.
Pasadena, CA 91123

C. Wayne Cole, Trustee
300 W. Green St.
Pasadena, CA 91123

Jack Elliott, Trustee
300 W. Green St.
Pasadena, CA 91123

David Jon Hill, Trustee
300 W. Green St.
Pasadena, CA 91123

Harold Jackson, Trustee
300 W. Green St.
Pasadena, CA 91123

Brian Knowles, Trustee
300 W. Green St.
Pasadena, CA 91123

Van Lisman, Trustee
300 W. Green St.
Pasadena, CA 91123

Jack Martin, Trustee
300 W. Green St.
Pasadena, CA 91123

Richard Rice, Trustee
300 W. Green St.
Pasadena, CA 91123

Harold Treybig, Trustee
300 W. Green St.,
Pasadena, CA 91123

Defendant objects to the foregoing interrogatory, insofar as it requests the annual compensation of the officers and directors of Ambassador College, on the following grounds:

(a) That it is irrelevant to the subject matter of this action and is not reasonably calculated to lead to the discovery of admissible evidence.

(b) That it is in violation of this defendant's rights of, and the rights of those affiliated or associated with this defendant, of free exercise of religion and of the prohibition against the establishment of religion under the First Amendment of the U.S. Constitution, under Article I, Section 4 of the California Constitution and under Article I, Section 1, Paragraphs II and III of the constitution of the State of Georgia, in that said interrogatory is calculated to lead to annoyance, embarrassment, oppression, harassment and undue burden of defendant and defendant's associates and affiliates, because of defendant's religion.

(c) That it is in violation of the rights of defendant, and those affiliated and associated with defendant, to freedom of association under the First Amendment of the United States Constitution and under Article I, Section 10 of the California Constitution, because of defendant's relationship to the Worldwide Church of God.

(d) That it is in violation of the rights of defendant, and those affiliated and associated with defendant, of privacy under (1) the penumbra right of privacy of freedom of association and of religion and of prohibition against establishment of religion under the First Amendment of the United States Constitution, (2) of the penumbra right of privacy of people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures under the Fourth Amendment of the U.S. Constitution, (3) of the penumbra right of privacy under the Ninth Amendment of the U.S. Constitution, (4) the inalienable right of privacy under Article I, Section 1 of the constitution of the State of California and (5) of the common law right of privacy as construed by the courts.

(e) That it is in violation of this defendant's rights, and those affiliated and associated with defendant, under the Fourth Amendment of the U.S. Constitution, under

Article I, Section 13, of the California Constitution and Article I, Section I, Paragraph X of the Constitution of the State of Georgia of people to be secure in their persons, papers and effects, and to be free from unreasonable searches and seizures.

(f) That it is in violation of the rights of defendant, and of those affiliated and associated with defendant under 42 U.S.C., Section 1983.

(g) That it is in violation of the defendant's inalienable rights, and those affiliated and associated with defendant, under Article I, Section 1 of the California Constitution and under Article I, Section I, Paragraph I of the Constitution of the State of Georgia.

(h) That plaintiff's alleged causes of action are a sham and this interrogatory is intended to cause defendant annoyance, embarrassment, oppression, and undue burden and expense so as to invoke a settlement, all of which is an abuse of this court's process.

(i) That if Section 33 of the Georgia Civil Practice Act (Ga. Code Ann. §81A-133) is construed to compel defendant to provide the information requested by this interrogatory, said code section, as construed, is unconstitutional in violation of the state and federal constitutional provisions cited in the foregoing objections.

INTERROGATORY NO. 5:

List the names and addresses of all officers, directors, or members of any Board of Trustee of the Worldwide Church of God, and for each such officer, director, or trustee, list the annual compensation of each.

RESPONSE TO INTERROGATORY NO. 5:

Defendant objects to this interrogatory on the following grounds:

(a) That it is irrelevant to the subject matter of this action and is not reasonably calculated to lead to the discovery of admissible evidence.

(b) That it is in violation of this defendant's rights, and the rights of those affiliated or associated with this defendant, of free exercise of religion and of the prohibition against the establishment of religion under the First Amendment of the U.S. Constitution, under Article I, Section 4 of the California Constitution, and under Article I, Section 1, Paragraphs II and III of the constitution of the State of Georgia, in that said interrogatory is calculated to lead to annoyance, embarrassment, oppression, harassment and undue burden of defendant and defendant's associates and affiliates, because of defendant's religion.

(c) That it is in violation of the rights of defendant, and those affiliated and associated with defendant, to freedom of association under the First Amendment of the United States Constitution and under Article I, Section 10 of the California Constitution, because of defendant's relationship to the Worldwide Church of God.

(d) That it is in violation of the rights of defendant, and those affiliated and associated with defendant, of privacy under (1) the penumbra right of privacy of freedom of association and of religion and of prohibition against establishment of religion under the First Amendment of the United States Constitution, (2) of the penumbra right of privacy of people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures under the Fourth Amendment of the U.S. Constitution, (3) of the penumbra right of privacy under the Ninth

Amendment of the U.S. Constitution, (4) the inalienable right of privacy under Article I, Section 1 of the constitution of the State of California and (5) of the common law right of privacy as construed by the courts.

(e) That it is in violation of this defendant's rights, and those affiliated and associated with defendant, under the Fourth Amendment of the U.S. Constitution, under Article I, Section 13 of the California Constitution and Article I, Section I, Paragraph X of the Constitution of the State of Georgia of people to be secure in their persons, papers and effects, and to be free from unreasonable searches and seizures.

(f) That it is in violation of the rights of defendant, and of those affiliated and associated with defendant under 42 U.S.C., Section 1983.

(g) That it is in violation of the defendant's inalienable rights, and those affiliated and associated with defendant, under Article I, Section 1 of the California Constitution and under Article I, Section I, Paragraph I of the Constitution of the State of Georgia.

(h) That plaintiff's alleged causes of action are a sham and this interrogatory is intended to cause defendant annoyance, embarrassment, oppression, and undue burden and expense so as to invoke a settlement, all of which is an abuse of this court's process.

(i) That if Section 33 of the Georgia Civil Practice Act (Ga. Code Ann. §81A-133) is construed to compel defendant to provide the information requested by this interrogatory, said code section, as construed, is unconstitutional in violation of the state and federal constitutional provisions cited in the foregoing objections.

* * *

INTERROGATORY NO. 12:

State the total gross receipts or gross revenue received by Ambassador College for the years 1974, 1975, 1976 and 1977.

RESPONSE TO INTERROGATORY NO. 12:

Defendant objects to this interrogatory on the following grounds:

(a) That it is irrelevant to the subject matter of this action and is not reasonably calculated to lead to the discovery of admissible evidence.

(b) That it is in violation of this defendant's rights, and the rights of those affiliated or associated with this defendant, of free exercise of religion and of the prohibition against the establishment of religion under the First Amendment of the U.S. Constitution, under Article I, Section 4 of the California Constitution, and under Article I, Section I, Paragraphs II and III of the Constitution of the State of Georgia, in that said interrogatory is calculated to lead to annoyance, embarrassment, oppression, harassment and undue burden of defendant and defendant's associates and affiliates, because of defendant's religion.

(c) That it is in violation of the rights of defendant, and those affiliated and associated with defendant, to freedom of association under the First Amendment of the United States Constitution and under Article I, Section 10 of the California Constitution, because of defendant's relationship to the Worldwide Church of God.

(d) That it is in violation of the rights of defendant, and those affiliated and associated with defendant, of privacy under (1) the penumbra right of privacy of freedom of association and of religion and of prohibition against establishment of religion under the First Amendment of the

United States Constitution, (2) of the penumbra right of privacy of people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures under the Fourth Amendment of the U.S. Constitution, (3) of the penumbra right of privacy under the Ninth Amendment of the U.S. Constitution, (4) the inalienable right of privacy under Article I, Section 1 of the Constitution of the State of California and (5) of the common law right of privacy as construed by the courts.

(e) That it is in violation of this defendant's rights, and those affiliated and associated with defendant, under the Fourth Amendment of the U.S. Constitution, under Article I, Section 13 of the California Constitution and Article I, Section I, Paragraph X of the Constitution of the State of Georgia of people to be secure in their persons, papers and effects, and to be free from unreasonable searches and seizures.

(f) That it is in violation of the rights of defendant, and of those affiliated and associated with defendant under 42 U.S.C., Section 1983.

(g) That it is in violation of the defendant's inalienable rights, and those affiliated and associated with defendant, under Article I, Section 1 of the California Constitution and under Article I, Section I, Paragraph I of the Constitution of the State of Georgia.

(h) That plaintiff's alleged causes of action are a sham and this interrogatory is intended to cause defendant annoyance, embarrassment, oppression, and undue burden and expense so as to invoke a settlement, all of which is an abuse of this court's process.

(i) That if Section 33 of the Georgia Civil Practice Act (Ga. Code Ann. §81A-133) is construed to compel

defendant to provide the information requested by this interrogatory, said code section, as construed, is unconstitutional in violation of the state and federal constitutional provisions cited in the foregoing objections.

* * *

INTERROGATORY NO. 15:

State the connection, affiliation, or other relationship of Herbert W. Armstrong to Ambassador College or to the Worldwide Church of God and state the amount of salary or other compensation received by the said Herbert W. Armstrong from Ambassador College or the Worldwide Church of God for the years 1974, 1975, 1976, and 1977. Have you or any person, agent, employee, or affiliate of yours ever received any correspondence or other contact from Madeline Hopkins Shaffer? If so, please state:

(a) The date of said correspondence or contact.

(b) The nature of said correspondence or contact.

(c) The subject of said correspondence or contact.

RESPONSE TO INTERROGATORY NO. 15:

Herbert W. Armstrong is the founder and Chancellor of Ambassador College and he is the Pastor General of the Worldwide Church of God.

As to the request for the compensation received by Herbert W. Armstrong from Ambassador College or the Worldwide Church of God for certain years, this defendant objects to said request on the following grounds:

(a) That it is irrelevant to the subject matter of this action and is not reasonably calculated to lead to the discovery of admissible evidence.

(b) That it is in violation of this defendant's rights, and the rights of those affiliated or associated with this defendant, of free exercise of religion and of the prohibition against the establishment of religion under the First Amendment of the U.S. Constitution, under Article I, Section 4 of the California Constitution, and under Article I, Section 1, Paragraphs II and III of the constitution of the State of Georgia, in that said interrogatory is calculated to lead to annoyance, embarrassment, oppression, harassment and undue burden of defendant and defendant's associates and affiliates, because of defendant's religion.

(c) That it is in violation of the rights of defendant, and those affiliated and associated with defendant, to freedom of association under the First Amendment of the United States Constitution and under Article I, Section 10 of the California Constitution, because of defendant's relationship to the Worldwide Church of God.

(d) That it is in violation of the rights of defendant, and those affiliated and associated with defendant, of privacy under (1) the penumbra right of privacy of freedom of association and of religion and of prohibition against establishment of religion under the Frist Amendment of the United States Constitution, (2) of the penumbra right of privacy of people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures under the Fourth Amendment of the U.S. Constitution, (3) of the penumbra right of privacy under the Ninth Amendment of the U.S. Constitution, (4) the inalienable right of privacy under Article I, Section 1 of the constitution of the State of California and (5) of the common law right of privacy as construed by the courts.

(e) That it is in violation of this defendant's rights, and those affiliated and associated with defendant, under

the Fourth Amendment of the U.S. Constitution, under Article I, Section 13 of the California Constitution and Article I, Section I, Paragraph X of the Constitution of the State of Georgia of people to be secure in their persons, papers and effects, and to be free from unreasonable searches and seizures.

(f) That it is in violation of the rights of defendant, and of those affiliated and associated with defendant under 42 U.S.C., Section 1983.

(g) That it is in violation of the defendant's inalienable rights, and those affiliated and associated with defendant, under Article I, Section 1 of the California Constitution and Article I, Section I, Paragraph I of the Constitution of the State of Georgia.

(h) That plaintiff's alleged causes of action are a sham and this interrogatory is intended to cause defendant annoyance, embarrassment, oppression, and undue burden and expense so as to invoke a settlement, all of which is an abuse of this court's process.

(i) That if Section 33 of the Georgia Civil Practice Act (Ga. Code Ann §81A-133) is construed to compel defendant to provide the information requested by this interrogatory, said code section, as construed, is unconstitutional in violation of the state and federal constitutional provisions cited in the foregoing objections.

(j) Insofar as any compensation paid Herbert W. Armstrong by the Worldwide Church of God, this interrogatory is additionally objectionable in that the Worldwide Church of God is a separate corporation not under the authority or control of this defendant, and the requested information is therefore unavailable to this defendant.

As to the request whether this defendant or any person, agent, employee, or affiliate ever received any correspondence or other contact from Mrs. Shaffer, this defendant objects to said request on the following grounds:

(a) That the interrogatory is overbroad in that it asks for the date, nature and the subject of every correspondence or contact "any person, agent, employee, or affiliate" of this defendant *ever* received from Mrs. Shaffer. This defendant corporation has been in existence for 31 years and has had thousands of employees, agents and affiliates. To require defendant to attempt to ascertain the information needed to answer this request in regard to "any person, agent, employee, or affiliate," who might ever have received any contact from Mrs. Shaffer, would be oppressive, unduly burdensome and expensive to this defendant.

(b) That this interrogatory is overbroad and seeks information that is irrelevant and not calculated to lead to the discovery of admissible evidence, in that it seeks the requested information as to "any correspondence or other contact" *ever* received, without limitation.

(c) That this interrogatory would violate the attorney-client and attorney-work product privileges.

(d) That this interrogatory would violate the clergyman-penitent privilege.

(e) That this interrogatory violates defendant's and defendant's affiliates and associates rights of freedom of speech and press under the First Amendment of the U.S. Constitution, under Article I, Section 9 of the California Constitution and under Article I, Section I, Paragraph IV of the Constitution of the State of Georgia, in that it would require defendant to reveal the date, nature and

subject of correspondence or contact concerning this defendant's, or its affiliates or associates, religious or philosophical views, or views on any other matter, protected by said Constitutional provisions, and thus have a chilling effect on defendant's and defendant's associates and affiliates exercise of said rights.

(f) That it is in violation of this defendant's rights, and the rights of those affiliated or associated with this defendant, of free exercise of religion and of the prohibition against the establishment of religion under the First Amendment of the U.S. Constitution, under Article I, Section 4 of the California Constitution and under Article I, Section 1, Paragraphs II and III of the constitution of the State of Georgia, in that said interrogatory is calculated to lead to annoyance, embarrassment, oppression, harassment and undue burden of defendant and defendant's associates and affiliates, because of defendant's religion.

(g) That it is in violation of the rights of defendant, and those affiliated and associated with defendant, to freedom of association under the First Amendment of the United States Constitution and under Article I, Section 10 of the California Constitution, because of defendant's relationship to the Worldwide Church of God.

(h) That it is in violation of the rights of defendant, and those affiliated and associated with defendant, of privacy under (1) the penumbra right of privacy of freedom of association and of religion and of prohibition against establishment of religion under the First Amendment of the United States Constitution, (2) of the penumbra right of privacy of people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures under the Fourth Amendment of the U.S. Constitution, (3) of the penumbra right of privacy under the Ninth Amendment of the U.S. Constitution, (4) the inalienable

right of privacy under Article I, Section 1 of the constitution of the State of California and (5) of the common law right of privacy as construed by the courts.

(i) That it is in violation of this defendant's rights, and those affiliated and associated with defendant, under the Fourth Amendment of the U.S. Constitution, under Article I, Section 13 of the California Constitution and Article I, Section I, Paragraph X of the Constitution of the State of Georgia of people to be secure in their persons, papers and effects, and to be free from unreasonable searches and seizures.

(j) That it is in violation of the rights of defendant, and of those affiliated and associated with defendant under 42 U.S.C., Section 1983.

(k) That it is in violation of the defendant's inalienable rights, and those affiliated and associated with defendant, under Article I, Section 1 of the California Constitution, and Article I, Section I, Paragraph I of the Constitution of the State of Georgia.

(l) That plaintiff's alleged causes of action are a sham and this interrogatory is intended to cause defendant anoyance, embarrassment, oppression, and undue burden and expense so as to invoke a settlement, all of which is an abuse of this court's process.

(m) That if Section 33 of the Georgia Civil Practice Act (Ga. Code Ann. §81A-133) is construed to compel defendant to provide the information requested by this interrogatory, said code section, as construed, is unconstitutional in violation of the state and federal constitutional provision cited in the foregoing objections.

* * *

/s/ Ben B. Mills, Jr.
Attorney for Defendants

VERIFICATION

I am Secretary for Ambassador College, a nonprofit corporation, organized and existing under the laws of the State of California, which is a defendant in the above-entitled action, and I have been authorized to make this verification on its behalf.

I have read the foregoing responses to Interrogatories and know the contents thereof.

I am informed and believe that the matters stated therein are true and on that ground I allege that the matters stated therein are true.

Dated: October 10, 1977

/s/ Ralph K. Helge
Ralph K. Helge, as
Secretary

Subscribed and affirmed before me this 10th day of October, 1978.

/s/ Larry W. Darden
Notary Public

IN THE
SUPERIOR COURT OF BEN HILL COUNTY,
STATE OF GEORGIA
CIVIL ACTION FILED NO. 1615

SALLY J. GOETZKE,
Plaintiff,

vs.

AMBASSADOR COLLEGE, a California corporation; JOSEPH E. POPE: and WILLARD F. McMILLAN,
Defendants.

DEFENDANT AMBASSADOR COLLEGE'S RESPONSES TO PLAINTIFF'S INTERROGATORIES TO AMBASSADOR COLLEGE

TO: JOHN T. CROWLEY, JR., attorney for plaintiff, SALLY J. GOETZKE:

Defendant Ambassador College hereby responds to the following interrogatories propounded by plaintiff upon this defendant.

INTERROGATORY NO. 4

List the Board of Directors, officers, and directors of Ambassador College and annual compensation paid annually to each.

RESPONSE TO INTERROGATORY NO. 4

The names and addresses of the officers and trustees have been previously furnished. The trustees are uncompensated.

* * *

Dated: February 9, 1979

Ambassador College
By /s/ Ralph K. Helge
Ralph K. Helge, as
Secretary

State of California)
) ss.
County of Los Angeles)

I, RALPH K. HELGE, state that I have read the foregoing response to interrogatories by me subscribed, have knowledge of its contents, and that the same is true, both in substance and in fact, except as to those matters stated under information and belief, and as to those matters, I verily believe them to be true.

/s/ Ralph L. Helge
Ralph K. Helge

Subscribed and affirmed to before me this 9th day of February, 1979.

/s/ Oliver B. Nesmith
(Seal) Notary Public

IN THE
SUPERIOR COURT OF BEN HILL COUNTY,
STATE OF GEORGIA
CIVIL ACTION FILE NO. 1615

SALLY J. GOETZKE,
Plaintiff,

vs.

AMBASSADOR COLLEGE, a California corporation;
JOSEPH E. POPE: and WILLARD F. McMILLAN,
Defendants.

DEFENDANT AMBASSADOR COLLEGE'S RESPONSES TO PLAINTIFF'S REQUEST FOR PRODUCTION OF DOCUMENTS

TO: JOHN T. CROWLEY, JR., attorney for plaintiff, SALLY J. GOETZKE:

Defendant Ambassador College hereby responds to plaintiff's first request for production of documents as follows:

* * *

REQUEST NO. 6:

The originals, or, if unavailable, copies thereof, of any deeds, wills, deed and real estate trust agreements, or other documents, under which any interest in any real property located in Georgia has passed or might in the future pass to you, or to the Worldwide Church of God or to some person, firm, corporation, or association for your benefit or for the benefit of the Worldwide Church of God.

RESPONSE TO REQUEST NO. 6:

This defendant objects to this request for production of documents on the following grounds:

(a) that it is irrelevant to the subject matter of this action and is not reasonably calculated to lead to the discovery of admissible evidence.

(b) that it is in violation of this defendant's rights, and the rights of those affiliated or associated with this defendant, of free exercise of religion and of the prohibition against the establishment of religion under the First Amendment of the U. S. Constitution, under Article 1, Section 4 of the California Constitution and under Article 1, Section I, paragraphs II and III of the Constitution of the State of Georgia, in that said interrogatory is calculated to lead to annoyance, embarrassment, oppression, harassment and undue burden of defendant and defendant's associates and affiliates, because of defendant's religion.

(c) that it is in violation of the rights of defendant, and those affiliated and associated with defendant, to freedom of association under the First Amendment of the United States Constitution and under Article I, Section 10 of the California Constitution, because of defendant's relationship to the Worldwide Church of God.

(d) that it is in violation of the rights of defendant, and those affiliated and associated with defendant, of privacy under (1) the penumbra right of privacy of freedom of association and of religion and of prohibition against establishment of religion under the First Amendment of the United States Constitution, (2) of the penumbra right of privacy

of people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures under the Fourth Amendment of the U. S. Constitution, (3) of the penumbra right of privacy under the Ninth Amendment of the U. S. Constitution, (4) the inalienable right of privacy under Article I, Section 1 of the Constitution of the State of California and (5) of the common law right of privacy as construed by the courts.

(e) that it is in violation of this defendant's rights, and those affiliated and associated with defendant, under the Fourth Amendment of the U. S. Constitution, under Article I, Section 13 of the California Constitution, and Article I, Section I, paragraph X of the Constitution of the State of Georgia of people to be secure in their persons, papers and effects, and to be free from unreasonable searches and seizures.

(f) that it is in violation of the rights of defendant, and of those affiliated and associated with defendant under 42 USC, Section 1983.

(g) that it is in violation of the defendant's inalienable rights, and those affiliated and associated with defendant, under Article I, Section 1 of the California Constitution and Article I, Section I, paragraph I of the Constitution of the State of Georgia.

(h) that plaintiff's alleged causes of action are a sham and this interrogatory is intended to cause defendant annoyance, embarrassment, oppression, and undue burden and expenses so as to invoke a settlement, all of which is an abuse of this Court's process.

(i) that if Section 34 of the Georgia Civil Practice Act (Ga. Code Ann. 81 A-134) is construed to compel defendant to provide the information requested by this interrogatory, said code section, as construed, is unconstitutional in violation of the state and federal constitutional provisions cited in the foregoing objections.

Dated: October 27th, 1978.

Respectfully submitted

by /s/ Ben B. Mills, Jr.
Mills & Chasteen
Rader, Helge & Gerson
Attorneys for Defendant,
Ambassador College

IN THE
SUPERIOR COURT OF BEN HILL COUNTY,
GEORGIA
CIVIL ACTION FILE NO. 1615

SALLY J. GEOTZKE,
Plaintiff,

vs.

AMBASSADOR COLLEGE, a California Corporation;
JOSEPH E. POPE; and WILLARD
F. McMILLAN,
Defendants.

JUDGMENT

(Filed April 10, 1979)

The above captioned matter having come on before me for hearing on the 9th day of April, 1979, at the Ben Hill County Courthouse, Fitzgerald, Ben Hill County, Georgia, pursuant to plaintiff's motion for order for judgment and it appearing to the Court that the defendant Ambassador College has willfully failed and refused to carry out the terms of the previous order of this Court entered on the 21st day of March, 1979, commanding and requiring the said defendant Ambassador College to comply with certain discovery, and it further appearing to the Court that said defendant Ambassador College has elected to suffer judgment under the terms and provisions of said order in lieu of complying with the commandments and requirements of said order, and it further appearing that certain other defendants in this action, namely Joseph E. Pope and Willard F. McMillan, have no further claim or interest in or to the property hereinafter described that is the subject matter of this litigation, by virtue of

said defendants having quit-claimed said property by quit-claim deeds from the said Willard F. McMillan to Ambassador College dated the 26th day of July, 1978, and recorded in the office of the Clerk of the Superior Court of Ben Hill County, Georgia, in Deed Book 154, page 24, and the deed from Joseph E. Pope to Ambassador College, dated the 2nd day of August, 1978, and recorded in the office of said Clerk in Deed Book 154, page 25, and as a result thereof, said defendant Willard F. McMillan and Joseph E. Pope have no basis to contest or oppose the relief hereinafter granted to plaintiff, it is therefore.

Ordered, that judgment is hereby awarded in favor of the plaintiff, Sally J. Geotzke, as the sole heir at law of Madeline Hopkins Shaffer, deceased, as follows:

1.

The deed dated February 19, 1975, from Madeline Hopkins Shaffer to Willard F. McMillan and Joseph E. Pope, as trustees of Ambassador College which deed is recorded in Deed Book 153, pages 202-203, in the office of the Clerk of the Superior Court of Ben Hill County, Georgia, to the following described property:

> All of Lot Number Three (3) and the East one-half of Lot Number Two (2) in that certain subdivision known as Lobingier Heights in the City of Fitzgerald, Ben Hill County, Georgia; said lots being particularly shown on plat of B. L. Coburn, dated April 3, 1948, and recorded in the office of the Clerk of the Superior Court of Ben Hill County, Georgia, on June 2, 1948, in Plat Book 2, page 13, to which reference is hereby made for a complete description of the property conveyed hereby. Said Lobingier Heights is a subdivision of Five Acre Tracts Numbers 917 and 918 of the Colony Domain of the American Tribune Soldiers Colony

Company, a plat of which is of file in the office of the Clerk of the Superior Court of Irwin County, Georgia,

is hereby set aside and cancelled as a cloud upon the title of said property and said deed is further set aside, cancelled, and voided, and the fee simple title to said land is declared to be in Sally J. Geotzke, the sole heir at law of Madeline Hopkins Shaffer, deceased, subject to any administration on the Estate of the said Madeline Hopkins Shaffer, deceased, as provided by law.

2.

The deed dated July 26, 1978, from Willard F. McMillan, as Trustee, to Ambassador College, which deed is recorded in Deed Book 154, page 24, in the office of the Clerk of the Superior Court of Ben Hill County, Georgia, which purportedly conveyed the property described in paragraph 1 of this judgment, is hereby set aside, voided and cancelled as a cloud upon the title of said property, and fee simple title to said property is declared to be in Sally J. Geotzke, the sole heir at law of the said Madeline Hopkins Shaffer, deceased, subject to any administration of the Estate of the said Madeline Hopkins Shaffer, deceased, as provided by law.

3.

The deed dated August 2, 1978, from Joseph E. Pope, as Trustee, to Ambassador College, which deed is recorded in Deed Book 154, page 25, in the office of the Clerk of the Superior Court of Ben Hill County, Georgia, which purportedly conveyed the property described in paragraph 1 of this judgment, is hereby set aside, voided and cancelled as a cloud upon the title of said property, and fee simple title to said land is declared to be in Sally J. Geotzke,

the sole heir at law of the said Madeline Hopkins Shaffer, deceased, subject to any administration of the Estate of the said Madeline Hopkins Shaffer, deceased, as provided by law.

4.

The fee simple title to the land and property described in paragraph 1 of this judgment is hereby declared to be in Sally J. Geotzke, the sole heir at law of Madeline Hopkins Shaffer, deceased, subject to any administration of the Estate of the said Madeline Hopkins Shaffer, deceased, as provided by law.

5.

The defendant Ambassador College shall pay all costs in this case as taxed by the Clerk of this Court.

6.

Let this judgment be entered upon the deed book records in the office of the Clerk of the Superior Court of Ben Hill County, Georgia

So ordered, this 10th day of April, 1979.

/s/ Hardy Gregory, Jr.
Judge, Superior Courts
Cordele Judicial Circuit

572

In the Supreme Court of Georgia

Decided: SEP 07 1979

35121. AMBASSADOR COLLEGE et al. v. GOETZKE.

MARSHALL, Justice.

Sally J. Goetzke (alternately spelled Geotzke and Goetke in the record) brought this action against Ambassador College—a non-profit, California corporation founded, endowed and supported by the Worldwide Church of God —and Georgia residents Pope and McMillan, seeking to cancel deeds to certain real estate in Ben Hill County to the defendant college, executed by defendants Pope and McMillan as trustees under a real estate trust agreement excuted by the plaintiff's mother three years prior to her death. The deeds, as well as the trust agreement, were sought to be set aside as a cloud on the title of the plaintiff, who was alleged to be the sole heir of the settlor of the trust, her mother.

The alleged grounds for cancellation were the settlor's failure to have the strength of mind and reason equal to a clear and full understanding of the nature and consequences of her act (Count 1); the settlor's lack of mental ability to understand business transactions, coupled with an inadequate consideration (Count 2); the establishment of a confidential relationship between the settlor and the defendant college to the extent of undue influence (Count 3); that the deed is unconscionable, unreasonable and unjust and of no force and effect as a conveyance of title (Count 4); and that the deeds and real estate trust agreement are testamentary in character (Count 5).

The plaintiff filed interrogatories and a request for production of documents against the college. No discovery was filed against the individual defendants. All three defendants timely answered. The defendant college objected to certain interrogatories and portions thereof and to one request for production. The trial court sustained the objections in part, denied the defendant college's motion for a protective order, and finally granted the relief prayed for in the complaint as a sanction for the defendant's failure to comply with a court order compelling the discovery, as authorized by Code Ann. § 81A-137(b)(2)(C). (Ga. L. 1966, pp. 609, 650; 1967, pp. 226, 235; 1970, p. 157; 1972, pp. 510, 530). The defendant college appeals from the judgment in favor of the plaintiff.

1. "This court has repeatedly held that it will not reverse a trial court's decision on discovery matters absent a clear abuse of discretion. *Williamson v. Lunsford,* 119 Ga. App. 240 (4) (166 SE2d 622); *Johnson v. O'Donnell,* 123 Ga. App. 375 (181 SE2d 291)." *Retail Credit Co. v. Unted Family Life Ins. Co.,* 130 Ga. App. 524 (3) (203 SE2d 760) (1974). Code Ann. § 81A-126(b)(1) (Ga. L. 1966, pp. 609, 635; 1967, pp. 226, 233; 1972, p. 510) provides in part as follows: "Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter."

The information sought—pertaining to the organization, mode of operation, and tactics of the defendant college vis-a-vis its securing the execution of deeds and real estate trust agreements—was relevant to this action for the

cancellation of such deeds and a real estate trust agreement, where it is alleged that undue influence existed and that the deed was unconscionable, unreasonable, unjust, and of no force and effect as a conveyance of title.

The appellant college argues that the disclosures sought would violate its constitutional rights of free exercise and non-establishment of religion; freedom of association; privacy; and/or security in their persons, houses, paper and effects against unreasonable searches and seizures. Assuming that this appellant's objections were timely made and substantiated, they relate primarily to the admissibility in evidence of such information. The latter portion of Code Ann. § 81A-126(b)(1), the first sentence of which was quoted hereinabove, is as follows: "It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." As the information here sought appears reasonably calculated to lead to the discovery of admissible evidence, and does not fall within any of the guidelines for entry of protective orders,[1] it was not error to compel the discovery and grant the sanction for non-compliance therewith.

2. The appellant college enumerates as error the denial of its motion to disqualify the plaintiff's counsel of record on the ground that her complaint is attacking the settlor's mental capacity, whereas another member of his law firm had prepared wills for the settlor, and would be expected to vouch for her testamentary capacity, thus creating a conflict of interests. It is not necessary to rule on this alleged error, however, because, even assuming the impropriety of the plaintiff's counsel's representation,

1. See Code Ann. § 81A-126(c); *Snead v. Pay-Less Rentals*, 134 Ga. App. 325 (5) (214 SE2d 412) (1975).

the motion for his disqualification was made after the appellant's failure to comply with the order compelling discovery, which authorized the sanction of default judgment, as held in Division 1, supra. As the case never went to trial, the issue of the credibility of the plaintiff's counsel or of his law partner was never in issue, therefore no harmful error existed.

3. The trial judge did not err in entering judgment against all three of the defendants although only the defendant college failed to comply with the order compelling discovery. As the trial judge noted in his order, the individual defendants had quitclaimed any interest they had in the realty to the defendant college; therefore, they had no further interest in the relief granted against the non-complying party defendant.

Judgment affirmed. All the Justices concur, except Hall, J. who concurs in Divisions 2, 3 and the judgment only.

(572)

35121. AMBASSADOR COLLEGE et al. v. GOETZKE.

HILL, Justice, concurring.

The court below overruled the defendant's objections to plaintiff's interrogatories and request for production of documents, ordered the defendant to answer and produce, and as sanction for its failure to do so, entered judgment for plaintiff. Defendant has failed to show on this record, as it must as appellant, that the court lacked probable cause for ordering the defendant to answer the interrogatories and to produce the requested document. This, therefore, is not the case in which to consider defendant's fourth amendment claim.

However, in a proper case we should consider the question of whether the powers of the state (i.e., the civil practice rules relating to discovery) are being used by civil litigants pursuing unsubstantiated claims in violation of the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, and whether the probable cause requirement of the fourth amendment relating to search warrants is applicable to civil discovery procedures and orders.

35121

SUPREME COURT OF GEORGIA

Atlanta, September 7, 1979

The Honorable Supreme Court met pursuant to adjournment. The following judgment was rendered:

Ambassador College et al. v. Sally J. Goetzke

This case came before this court upon an appeal from the Superior Court of Ben Hill, County; and, after argument had, it is considered and adjudged that the judgment of the court below be affirmed. All the Justices concur, except Hall, J., concurs in Division 2 and 3 and the judgment only.

Bill of Costs, $30.00

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta, November 15, 1979

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia, and that Mills & Chasteen paid the above bill of costs.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

/s/ Hazel E. Hallford

Deputy Clerk

35121

SUPREME COURT OF GEORGIA
Atlanta, September 25, 1979

The Honorable Supreme Court met pursuant to adjournment. The following order was passed:

Ambassador College et al. v. Sally J. Goetzke

Upon consideration of the motion for rehearing filed in this case, it is ordered that it be hereby denied.

SUPREME COURT OF THE STATE OF GEORGIA,
Clerk's Office, Atlanta, November 15, 1979

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

/s/ Hazel E. Hallford
Deputy Clerk

CODE OF GEORGIA, TITLE 81A

81A-133 [CPA § 33] Interrogatories to parties

(a) Availability; procedures for use

Any party may serve upon any other party written interrogatories to be answered by the party served, or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party.

Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 30 days after the service of the interrogatories, except that a defendant may serve answers or objections within 45 days after service of the summons and complaint upon that defendant. The court may allow a shorter or longer time. The party submitting the interrogatories may move for an order under section 81A-137(a) with respect to any objection to, or other failure to, answer an interrogatory.

(b) Scope; use at trial

Interrogatories may relate to any matters which can be inquired into under section 81A-126(b), and the answers may be used to the extent permitted by the rules of evidence.

An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pretrial conference or other later time.

(c) Option to produce business records

Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, or from a compilation, abstract or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries.

(Acts 1966, pp. 609, 646; 1972, pp. 510, 524.)

81A-134 [CPA § 34] Production of documents and things and entry land for inspection and other purposes

(a) Scope

Any party may serve on any other party a request (1) to produce and permit the party making the request, or someone acting on his behalf, to inspect and copy any designated documents (including writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection

devices into reasonably usable form), or to inspect and copy, test, or sample any tangible thing which constitute or contain matters within the scope of section 81A-126(b), and which are in the possession, custody, or control of the party upon whom the request is served; or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing or sampling the property or any designated object or operation thereon, within the scope of section 81A-126(b).

(b) Procedure

The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. The request shall set forth the items to be inspected, either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place and manner of making the inspection and performing the related acts.

The party upon whom the request is served shall serve a written response within 30 days after the service of the request, except that a defendant may serve a response within 45 days after service of the summons and complaint upon that defendant. The court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. The party submitting the request may move for an order under section 81A-137(a) with respect to any objection to or other failure to respond to

the request or any part thereof, or any failure to permit inspection as requested.

(c) Persons, firms or corporations not parties

The provisions of this section shall also be applicable with respect to discovery against persons, firms or corporations who are not parties, in which event a copy of the request shall be served upon all parties of record, or upon notice, the party desiring such discovery may proceed by taking the deposition of such person, firm or corporation on oral examination or upon written questions under the provisions of section 81A-130 or 81A-131. The nonparty or any party may file an objection as provided in paragraph (b) above. If the party desiring such discovery moves for an order under section 81A-137(a) to compel discovery, he shall make a showing of good cause to support his motion.

(Acts 1966, pp. 609, 646; 1967, pp. 226, 233; 1972, pp. 510, 525; 1979, p. 1041, eff. April 16, 1979.)

81A-137 [CPA § 37] Failure to make discovery: sanctions

(a) Motion for order compelling discovery

A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

(1) Appropriate court

An application for an order to a party may be made to the court in which the action is pending, or, on matters relating to a deposition, to the court in the county where the deposition is being taken. An application for an order to a deponent who is not a party shall be made to the court in the county where the deposition is being taken.

(2) Motion

If a deponent fails to answer a question propounded or submitted under section 81A-130 or 81A-131, or a corporation or other entity fails to make a designation under section 81A-130(b)(6) or 81A-131(a), or a party fails to answer an interrogatory submitted under section 81A-133, or if a party, in response to a request for inspection submitted under section 81A-134, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order.

If the court denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion made pursuant to section 81A-126(c).

(3) Evasive or incomplete answer

For purposes of the provisions of this Title which relate to depositions and discovery, an evasive or incomplete answer is to be treated as a failure to answer.

(4) Award of expenses of motion

If the motion is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is denied, the court shall, after opportunity for hearing, require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion, including attorney's fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

(b) Failure to comply with order

(1) Sanctions by court in county where deposition is taken

If a deponent fails to be sworn or to answer a question after being directed to do so by the court in the county in which the deposition is being taken, the failure may be considered a contempt of that court.

(2) Sanctions by court in which action is pending

If a party or an officer, director, or managing agent of a party or a person designated under section 81A-130 (b)(6) or 81A-131(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subsection (a) of this section or section 81A-135, the court in which the action is pending may make such orders in regard to the failure as are just, and, among others, the following:

(A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence;

(C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(D) In lieu of any of the foregoing orders, or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination;

(E) Where a party has failed to comply with an order under section 81A-135(a) requiring him to produce another for examination, such orders as are listed in subparagraphs (A), (B), and (C) of this paragraph, unless the party failing to comply shows that he is unable to produce such person for examination.

In lieu of any of the foregoing orders, or in addition thereto, the court shall require the party failing to obey the order or the attorney advising him, or both, to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(c) Expenses on failure to admit

If a party fails to admit the genuineness of any document or the truth of any matter as requested under section 81A-136, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, he may apply to the court for an order

requiring the other party to pay him the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The court shall make the order unless it finds that (1) the request was held objectionable pursuant to section 81A-136(a), or (2) the admission sought was of no substantial importance, or (3) the party failing to admit had reasonable ground to believe that he might prevail on the matter, or (4) there was other good reason for the failure to admit.

(d) Failure of party to attend at own deposition or serve answers to interrogatories or respond to request for inspection

If a party or an officer, director, or managing agent of a party or a person designated under section 81A-130 (b)(6) or 81A-131(a) to testify on behalf of a party fails (1) to appear before the officer who is to take his deposition, after being served with the proper notice, or (2) to serve answers or objections to interrogatories submitted under section 81A-133, after proper service of the interrogatories, or (3) to serve a written response to a request for inspection submitted under section 81A-134, after proper service of the request, the court in which the action is pending on motion may make such orders in regard to the failure as are just, and, among others, it may take any action authorized under subparagraphs (A), (B), and (C) of paragraph (b)(2) of this section. In lieu of any order, or in addition thereto, the court shall require the party failing to act or the attorney advising him, or both, to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in the provisions of this Title which relate to depositions and discovery may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by section 81A-126(c).

(Acts 1966, pp. 609, 650; 1967, pp. 226, 235; 1970, p. 157; 1972, pp. 510, 530.)

Supreme Court, U. S.
FILED
JAN 18 1980
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-961

AMBASSADOR COLLEGE,
Petitioner,

vs.

SALLY J. GOETZKE,
Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

ALLEN M. ALEXANDER, JR.
601 Southern Mutual Building
Athens, Georgia 30601

JOHN T. CROLEY, JR.
101 East Pine Street
P. O. Box 308
Fitzgerald, Georgia 31750

Attorneys for Respondent

E. L. MENDENHALL, INC., 926 Cherry Street, Kansas City, Mo. 64106, (816) 421-3030

TABLE OF CONTENTS

OPINIONS BELOW 1
JURISDICTION 2
QUESTION PRESENTED 2
STATUTES AND RULES INVOLVED 2
STATEMENT OF THE CASE 4
ARGUMENT 9
CONCLUSION 17

Table of Authorities

CASES

Bailey v. Anderson, 326 U.S. 203 (1945) 9
Black v. Cutter Laboratories, 351 U.S. 292 (1956) 10
Cooper Company of Gainsville v. The State, 187 Ga. 497, 1 S.E. 2d 436 (1939) 16
Drew v. Hagy, 134 Ga. App. 852, 216 S.E. 2d 676 (1975) 10
Hanna v. Plumer, 380 U.S. 460 (1965) 15
Lynch v. New York Ex Rel. Pierson, 293 U.S. 52 (1934) 9
McGoldrick v. Gulf Oil Corp., 309 U.S. 2 (1940) 9
Michigan v. Tyler, 436 U.S. 499 (1978) 11
Murdock v. Memphis, 20 Wall. (U.S.) 590 (1875) 9
NAACP v. Alabama, 357 U.S. 449 (1958) 15, 16
Reynolds v. Reynolds, 217 Ga. 234, 123 S.E. 2d 115 (1961) 11
Southwestern Bell Teleph. Co. v. Oklahoma, 303 U.S. 206 (1938) 9
Street v. New York, 394 U.S. 576 (1969) 9
Williamson v. Lunsford, 119 Ga. App. 240, 166 S.E. 2d 622 (1969) 11

CONSTITUTION, STATUTES AND RULES

Georgia Code Annotated § 22-1401 16

Georgia Civil Practice Act:

Section 4(e)(1)(iii), Ga. Code Ann. § 81A-104(e)(1)(iii) 2, 10

Section 33, Ga. Code Ann. § 81A-133 ..... 3, 10

Section 34, Ga. Code Ann. § 81A-134 ..... 3, 10

Revised Rules, Supreme Court of the United States:

Rule 23 11

Rule 23(f) 3

OTHER AUTHORITIES

Newsweek, January 15, 1979, Vol. XCIII, No. 3, at 61 13

The Atlanta Journal and Constitution, November 23, 1978, at 5-F 13

The Atlanta Journal and Constitution, January 6, 1979, at 8-B 13

The Atlanta Journal and Constitution, Saturday, January 13, 1979, at 8-B 13

The Atlanta Journal and Constitution, Saturday, February 17, 1979, at 1 13

The Atlanta Journal and Constitution, February 18, 1979, at 1 13

In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-961

AMBASSADOR COLLEGE,
Petitioner,

vs.

SALLY J. GOETZKE,
Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

OPINIONS BELOW

The opinion of the Supreme Court of Georgia is reported as Ambassador College, et al. vs. Goetzke, 244 Ga. 322 (1979), and is appended to the Petition for a Writ of Certiorari (Petition App. A34). The order of the Supreme Court of Georgia denying rehearing is not reported but is appended to the Petition for a Writ of Certiorari (Petition App. A40). The judgment of the Superior Court of Ben Hill County, Georgia is not reported, but is appended to the Petition for a Writ of Certiorari (Petition App. A30).

JURISDICTION

Respondent respectfully maintains that this Court lacks jurisdiction to review this cause for the reason that the Supreme Court of Georgia decided said cause based upon adequate and independent non-federal grounds and for the further reason that said cause does not present a substantial federal question for review.

QUESTION PRESENTED

Respondent shows that Petitioner puts forth a question which was never properly raised in a timely manner in the trial court and was not a basis of decision in the Court below, and is therefore not proper for consideration by this Court.

STATUTES AND RULES INVOLVED

Georgia Civil Practice Act, Section 4(e)(1)(iii), Ga. Code Ann. § 81A-104(e)(1)(iii):

> "When the court orders service by publication, the Clerk shall cause the publication to be made in the paper in which sheriff's advertisements are printed four times within the ensuing 60 days, publication to be at least seven days apart. The party obtaining the order shall at the time of filing deposit the cost of publication. Said published notice shall contain the name of the parties plaintiff and defendant, with a caption setting forth the court, the character of the action, the date the action was filed, the date of the order for service by publication, and a notice directed and addressed to the party to be thus served, commanding him to file with the Clerk and serve upon

> the plaintiff's attorney an answer within 60 days of the date of the order for service by publication and shall bear teste in the name of the Judge, and shall be signed by the Clerk of said court. Where the residents or abiding place of the absent or non-resident [party] is known, the party obtaining the order shall advise the clerk thereof and it shall be the duty of the clerk, within 15 days after filing of the order for service by publication, to inclose, direct, stamp and mail a copy of the notice, together with a copy of the order for service by publication and complaint (if any), to said party named in said order at his last-known address, if any, and make an entry of his action on the complaint or other pleadings filed in said case. . . ."

Georgia Civil Practice Act, § 33, Georgia Code Annotated § 81A-133 (Petition App. A41-A42).

Georgia Civil Practice Act, § 34, Georgia Code Annotated § 81A-134 (Petition App. A42-A44).

Rule 23(f), Revised Rules of the Supreme Court of the United States:

> "If review of the judgment of a state court is sought, the statement of the case shall also specify the stage in the proceedings in the court of first instance and in the appellate court, at which, and the manner in which, the federal questions sought to be reviewed were raised; the method of raising them (e.g., by a pleading, by request to charge and exceptions, by assignment of error); and the way in which they were passed upon by the Court; such pertinent quotations of specific portions of the record, or summary thereof, with specific reference to the places in the record where the matter appears (e.g., ruling on exception, portion of the court's

charge and exception thereto, assignment of errors) as will show that the federal question was timely and properly raised so as to give this court jurisdiction to review the judgment on writ of certiorari. . . ."

STATEMENT OF THE CASE

The statement of Petitioner includes allegations of fact that are not supported by the record in any manner whatsoever, and deletes certain facts necessary to a thorough consideration of the petition, and Respondent therefore sets forth the salient facts of this case.

In February of 1975, Respondent's mother, Madeline Hopkins Shaffer, executed a "deed and real estate trust agreement" (R. 11-12) under which she conveyed her homeplace to two individuals as trustees for Petitioner Ambassador College. The deed and trust agreement was not recorded, however, until July 7, 1978 (R. 11), in excess of three years after its execution and less than one month after the death of Madeline Hopkins Shaffer (R. 4). Shortly thereafter, the two trustees quitclaimed any interest they had in the property to Petitioner (R. 13-14).

Upon learning of the existence of the above-referenced deeds, Sally J. Goetzke, Respondent herein and the daughter and sole heir at law of Madeline Hopkins Shaffer, brought suit against the Petitioner and the two trustees seeking cancellation of the above-referenced deeds as a cloud upon the title of the said property on several grounds, including mental incapacity (R. 6), lack of mental ability coupled with inadequate consideration and fraudulent misrepresentation (R. 7), undue influence (R. 7), unconscionability (R. 8), and the testamentary character of the real estate deed and trust agreement (R. 9). The complaint was filed on September 8, 1978 (R. 3), and an order that Petitioner be served by publication was duly entered on the same day (R. 22).

Attached to and as a part of her complaint, Respondent also filed seventeen enumerated interrogatories (R. 15-18) and six requests for production of documents (R. 19) directed to Petitioner.

Although the order for service by publication and certificate of mailing were dated September 8, 1978 (R. 23, 24), Ambassador College did not file any response to said interrogatories or requests for production of documents until October 27, 1978, 49 days after the date of service (R. 36, 63). The responses of Ambassador College to said interrogatories and requests for production of documents totalled some 71 pages (R. 36-106), and with the exception of partial and incomplete answers to interrogatories numbers 4, 6, 14 and 15 and with the exception of request for production of documents number 1, Ambassador College failed and refused to answer any of said interrogatories or produce any of said documents, and instead filed lengthy objections thereto (R. 36-106). Thereafter, on November 6, 1978, Petitioner filed its answer to the complaint of Respondent (R. 107). On November 17, 1978, Respondent filed her motion for order to make discovery with regard to the above interrogatories and requests for production of documents (R. 117-121), and said motion was set for hearing on December 12, 1978 (R. 20). The matter was heard by the Court at said time, and although the burden of proving the validity of the objections was upon Petitioner Ambassador College, said Ambassador College failed to produce any evidence whatsoever. Nevertheless, the trial court painstakingly considered those objections that could be considered on their face without substantiation by the production of evidence, and on January 15, 1979, entered a detailed order sustaining the objection of Ambassador College that certain

of said interrogatories and requests for production of documents were overly broad and ordering the remainder answered or produced within 30 days of the date of the order (R. 129-130).

Although the Court ordered Ambassador College to answer interrogatories numbers 1, 2, 3, 4, 5, 7, 8, 9, 12, 17, and parts of 15, and ordered Ambassador College to produce the documents requested in request number 6 (R. 129-130) Ambassador College only partially and incompletely answered interrogatories numbers 4, 7, 8, 9, and 17 (R. 148-151), still failing and refusing to answer the remaining interrogatories or produce the documents as ordered by the Court.

Thereafter, on the 21st day of February, 1979, Respondent filed her motion for imposition of sanctions under which she specifically requested that the Court grant her judgment for all the relief prayed for in her complaint due to Petitioner Ambassador College's continued willful failure to comply with the order of the Court regarding said discovery (R. 212-216).

The motion was heard by the Court on the 9th day of March, 1979, and on the 15th day of March, 1979 (R. 239), and again Petitioner failed to produce any evidence whatsoever in substantiation of its objections, and thereafter, on March 21, 1979 (R. 239), the Court entered an order finding that Ambassador College had willfully failed and refused to comply with the previous order of the Court entered on the 15th day of January, 1979, and ordering that Respondent's motion for sanctions be granted and that Respondent have judgment against Ambassador College for the relief prayed for unless Ambassador College filed answers and produced documents as required by said order on or before March 30, 1979 (R. 239-240).

In spite of the fact that 204 days had passed since the date of service of said interrogatories and requests for production of documents upon Ambassador College and in spite of the fact that Ambassador College had been granted additional time to answer said interrogatories and comply with said requests for production on two separate occasions by order of the Court said Ambassador College still failed and refused to answer said interrogatories or produce said documents as ordered by the Court and thereafter on April 2, 1979, Respondent Sally J. Goetzke filed her motion for order for judgment based upon said continued willful failure to comply upon the part of Ambassador College (R. 243-247). The matter was heard by the Court on April 9, 1979, and on April 10, 1979, the Court entered judgment in favor of Respondent finding that Ambassador College had willfully failed and refused to carry out the terms of the previous orders of the Court (R. 248), and the Court thereupon ordered the deeds cancelled as a cloud upon the title of Respondent, as prayed for in her complaint (R. 248-250).

Petitioner thereupon appealed to the Supreme Court of Georgia and the cause was argued before said Court on July 11, 1979. In argument, Ambassador College discussed its objections to the interrogatories, relying mainly on its objection that the same were irrelevant to the subject matter of the action and not reasonably calculated to lead to the discovery of admissible evidence. Respondent vigorously argued that the objections of Petitioner were not timely filed and therefore could not be considered, and further argued that even if they were timely filed, no evidence was presented to substantiate that Petitioner was entitled to any constitutional protection.

Petitioner contends that the Supreme Court of Georgia treated its objections as going to the admissibility of the

information sought rather than its production in the first place (Petition, p. 6). Respondent shows, however, that a careful reading of the opinion of the Supreme Court of Georgia (Petition App. A34-A38) reveals that the Supreme Court of Georgia did not decide the constitutional questions raised but rather affirmed the trial court on independent and adequate non-federal grounds.

Respondent shows that although four separate hearing dates were set by the Court during the proceedings aforesaid at no time was any evidence whatsoever offered by Petitioner in support of its objections to the discovery sought by Respondent, and the trial court was thus deprived of the opportunity to ascertain facts concerning the nature and status of Ambassador College, which Ambassador College has attempted to present to this Court in its Petition (See page 3, footnote 1). Petitioner has thus brought this case to this Court requesting that this Court give Petitioner constitutional protection based on an alleged religious affiliation, when in fact Petitioner failed to make even a threshold showing in the trial court that its status or connections entitled it to the constitutional protections requested.[1]

---

1. It is interesting to note that Petitioner based its entitlement to constitutional privileges on its alleged close relationship with the Worldwide Church of God, while at the same time Petitioner objected to furnishing answers to discovery concerning the Church on the grounds that the Worldwide Church of God was a separate corporation, not under the authority or control of Ambassador College, and the requested information was therefore unavailable (Petition App. A19). This alone seems to demonstrate the need for some threshold showing of entitlement by one claiming constitutional privileges.

ARGUMENT

I.

The Decision Below Is Based Upon Adequate Independent Non-Federal Grounds and This Court, Therefore, Lacks Jurisdiction to Review This Cause.

It is well settled that this Court will not review the judgment or decree of the highest court of a state where that judgment or decree rests upon adequate independent non-federal grounds. *Murdock v. Memphis,* 20 Wall. (U.S.) 590 (1875). This time-honored rule is derived from the basic grant of jurisdiction to this Court to review the judgments and decrees of state courts, and it is essential to the jurisdiction of this Court in reviewing a decision of a court of a state that it must appear affirmatively from the record, not only that a federal question was presented for decision to the highest court of the state having jurisdiction, but that its decision of a federal question was necessary to the determination of the cause and that the federal question was actually decided or that the judgment as rendered could not have been given without deciding it. *Southwestern Bell Teleph. Co. v. Oklahoma,* 303 U.S. 206, 212, 213 (1938); *McGoldrick v. Gulf Oil Corp.,* 309 U.S. 2 (1940); *Lynch v. New York Ex Rel. Pierson,* 293 U.S. 52 (1934). Furthermore, it has been held that where the highest court of a state has failed to pass upon a federal question, it will be assumed that the omission was due to want of proper presentation in the state courts, unless the aggrieved party in this Court can affirmatively show the contrary. *Bailey v. Anderson,* 326 U.S. 203 (1945); *Street v. New York,* 394 U.S. 576 (1969). Moreover, where the opinion of the state court does not clearly delineate the basis of its decision as between

a federal constitutional ground and an independent non-federal ground, this Court will choose the interpretation which does not present the Court with a constitutional question. *Black v. Cutter Laboratories,* 351 U.S. 292 (1956).

Clearly, the Petitioner has not met its burden of establishing that a federal question has been properly presented to this Court for review. Petitioner concedes that the Supreme Court of Georgia did not directly decide the alleged constitutional issues adverse to Petitioner, but rather Petitioner contends that the Supreme Court of Georgia effectively did so by ignoring the objections (Petition, pp. 6, 9). Respondent agrees that the Supreme Court of Georgia did not directly meet the constitutional objections raised by Petitioner, but it is respectfully submitted that no ruling was necessary due to the presence of other adequate and independent non-federal grounds which authorized the affirmance of the trial court.

Several adequate and independent non-federal grounds were present in this cause upon which affirmance was authorized. First, Respondent vigorously argued that under Georgia Code Annotated §§ 81A-133, 81A-134, and 81A-104(e)(1)(iii), supra, Petitioner had 45 days after the date of the order for service by publication to file its objections to the discovery sought. Petitioner did not file said objections, however, until some 49 days had elapsed (R. 36, 63) and Respondent shows that such a late filing of objections waives the objections under applicable Georgia law. *Drew v. Hagy,* 134 Ga. App. 852, 216 S.E. 2d 676 (1975). The failure to present a federal question in conformance with state procedure constitutes an adequate and independent ground of decision barring review in this Court, so long as the State has a legitimate interest in enforcing its procedural rule, and the Petitioner bears the

burden of asserting that the State does not have such a legitimate interest. *Michigan v. Tyler,* 436 U.S. 499 (1978). Furthermore, Rule 23 of the Revised Rules of the Supreme Court of the United States, supra, specifically imposes upon the Petitioner the burden of affirmatively showing that the federal question asserted on petition for certiorari was timely and properly raised so as to give this Court jurisdiction to review the judgment of the Court below. This the Petitioner has failed to do, and this alone would justify denial of the writ sought.

Second, Respondent shows that the burden of showing the validity of objections to discovery is on the objector under applicable Georgia law. *Williamson v. Lunsford,* 119 Ga. App. 240, 166 S.E. 2d 622 (1969). In the case of constitutional objections such as those advanced by Petitioner based on associational privacy, it would seem that at the very least some sort of threshold showing that the objector is an entity entitled to assert such objections would be required, especially in a case such as the one at bar where the entity is admittedly not a church itself, but bases its entitlement to the constitutional protection on its relationship to a church. Nevertheless, no competent evidence whatsoever was presented at any point during the proceedings below which would establish in any way the status of Petitioner as an entity entitled to claim the constitutional protections asserted.

In its petition, Petitioner attempts to put forth the necessary facts by citing the Court to its own answer to an interrogatory propounded by Respondent (Petition, p. 3). Answers to interrogatories, however, like an affidavit, are not subject to cross-examination and are therefore not admissible or competent evidence to prove a contention advanced by the answering party. *Reynolds v. Reynolds,* 217 Ga. 234, 123 S.E. 2d 115 (1961). Even if some evi-

dence had been presented, certainly the trial court was entitled to find that the connections were not such that Petitioner was entitled to any constitutional protections. Respondent submits that since the record in this case does not sufficiently establish a factual basis in light of which the constitutional questions allegedly present were properly presented, the Supreme Court of Georgia was correct in not meeting them, and for this reason, this Court lacks jurisdiction to consider them now.

The Georgia Supreme Court recognized the existence of these independent non-federal questions when the Court stated: "Assuming that this appellant's objections were timely made and substantiated, they relate primarily to the admissibility in evidence of such information." (Petition App. A36; 244 Ga. 322, 323). When the Court referred to the question of whether or not the objections were timely made, it is certainly reasonable that the Court was referring to the procedural argument made herein, supra. Likewise, the reference to substantiation by the Court referred to some showing by Ambassador College that it was an entity entitled to the constitutional protections advanced. This proposition is supported by the fact that the Court does not pretend to deal with all of the objections raised by the Petitioner in that the Court states that the objections related "primarily" to the admissibility in evidence of such information. As stated earlier, it is submitted that the Court was referring to the vigorous argument advanced by Petitioner that the discovery sought was irrelevant and inadmissible since it related to independent transactions. Since the Court did not meet all the constitutional objections raised by Petitioner, it stands to reason that the Court was relying on the adequate, independent non-federal grounds advanced by Respondent. This is especially true in light of Justice Hill's concurring opinion, wherein he states that the record in this cause

was not such as would allow the Court to properly consider Petitioner's Fourth Amendment claims (Petition App. A38; 244 Ga. 322, 325).

In the Petition for Writ of Certiorari (see page 9), Petitioner argues that the substantiation requirement mentioned by the Supreme Court of Georgia would require some sort of showing by Petitioner that disclosure of the information sought would infringe on its rights of association and free exercise of religion. Petitioner argues that the burden should be the other way, that is, Respondent should show that disclosure would not infringe upon Petitioner's rights of association and free exercise of religion. Petitioner has overlooked the fact, however, that this is not a case where the nature and status of the entity seeking constitutional protection is not in question, as is the normal case. To the contrary, in this case, the main thrust of Respondent's lawsuit and discovery was concerned with whether or not Petitioner was in fact related to a legitimate religious organization at all, or whether Petitioner and its associated entities were simply vehicles for financial gain for a selfish few.[2] To allow a party against whom discovery is sought to avoid such discovery simply by stating that they are "church related" in a case where the very nature and extent of the relationship itself is the

---

2. Respondent certainly had ample ground to become suspect of the exact nature of Petitioner and the associated Worldwide Church of God when the church and the college received national media attention as a result of serious allegations that church and college officials were pilfering church assets and diverting millions of dollars to their own use and benefit. These accusations prompted legal action by the Attorney General of the State of California, which resulted in the church and the college being placed in receivership. The Atlanta Journal and Constitution, January 6, 1979, at 8-B; The Atlanta Journal and Constitution, Saturday, February 17, 1979, at 1; The Atlanta Journal and Constitution, Saturday, January 13, 1979, at 8-B; The Atlanta Journal and Constitution, November 23, 1978, at 5-F; The Atlanta Journal and Constitution, February 18, 1979, at 1; Newsweek, January 15, 1979, Vol. XCIII, No. 3, at 61.

point in question, provides at best a circuitous procedure whereby the issue is simply avoided, and cannot be reached. Petitioner's argument is, simply put, "one cannot find out what we are, because of what we are". Certainly, the Supreme Court of Georgia correctly concluded that some sort of threshold showing of the nature of the objecting entity could be required before considering the validity of the constitutional objections advanced by Petitioner.

II.

Petitioner Does Not Put Forth a Substantial Federal Question for This Court's Consideration, and the Petition for Writ of Certiorari Should Therefore Be Denied.

Although the question of whether or not a substantial federal question has been presented for consideration is necessarily interwoven with considerations of the existence of independent non-federal grounds for decision, nevertheless, Respondent maintains that the questions advanced by Petitioner fail to meet the tests of reviewability previously propounded by this Court. Petitioner alleges in the Petition for Writ of Certiorari that the decision of the Georgia Supreme Court conflicts with First Amendment principles enunciated by this Court (see page 9) but Petitioner fails to cite any decision of this Court dealing with the constitutionality of the application of discovery rules in a context similar to the case at bar. The Georgia Civil Practice Act (Ga. Code Ann. Title 81A) is in all major respects derived from the Federal Rules of Civil Procedure. The Federal Rules of Civil Procedure are, of course, promulgated by this Court, the very court whose primary responsibility is the protection of the constitutional rights which Petitioner now claims limit the discovery process. Certainly, if these rights were intended to limit the scope

of discovery in a civil proceeding, this Court, in promulgating the Rules, would have taken this into account. A holding that the right of associational privacy requires considerations external to those raised by the discovery rules would have the effect of destroying discovery in civil matters. The discovery rules in question here passed constitutional muster when first promulgated by this Court, and the protections afforded therein are adequate to protect the constitutional rights of Petitioner and all other litigants subjected to discovery. *Hanna v. Plumer*, 380 U.S. 460 (1965).

Petitioner relies in the main on associational rights enunciated in *NAACP v. Alabama*, 357 U.S. 449 (1958). There, the State of Alabama sought the production of the entire membership list of the NAACP in Alabama, for no apparent worthwhile reason. The Court did not preclude the possibility that under certain circumstances production would be proper where a sufficient State interest in obtaining the list could be shown. In the case at bar, Respondent never sought the names of all members of Petitioner (assuming there are such members), or a list of all contributors. Rather, Respondent sought to discover the names and locations of persons who quite probably could provide Respondent with information concerning the tactics and mode of operation of Petitioner and its related organizations in obtaining gifts of real estate or other property similar to those utilized in the case of Respondent's mother. Certainly, requiring Petitioner to reveal this very pertinent, relevant information that could not be obtained from other sources,[3] in a civil context where Petitioner is opposed by a private citizen who alleges

3. Respondent could not rely on a search of public records to obtain the names of potential witnesses, since it appeared that Petitioner was in the habit of recording deeds such as the one in question here only after the demise of the grantor (R. 4, 11).

that she has been aggrieved by their activities, satisfies all requirements of *NAACP v. Alabama,* supra, for disclosure, and does not expose those whose names are revealed to "economic reprisal, loss of employment, threat of physical coercion, and other manifestations of public hostility" which was so much the concern of the court in *NAACP v. Alabama,* supra.

It appears settled that the existence of a foreign corporation within a state depends solely on the will of the state, and that it only has such powers within the state as are conferred upon it by the state. *Cooper Company of Gainsville v. The State,* 187 Ga. 497, 1 S.E. 2d 436 (1939); Ga. Code Ann. § 22-1401. Petitioner is in effect asking that Georgia allow Petitioner to come into the State and be recognized, and own property within the State, and have the property rights of Petitioner protected by the laws of the State, and yet Petitioner insists Georgia courts are without the power to inquire into the facts and circumstances under and by virtue of which Petitioner acquired the ownership of the property within the State that is in question. If Petitioner cannot be forced to reveal the information sought, certainly Petitioner should not expect to be allowed to hold property which might have been improperly acquired. Perhaps the remedy conceived by the trial court is the precise result that should come about in such a situation—Petitioner can refuse to answer, but it cannot use such a refusal as a cover for possible improper activity. Certainly, there is no substantial federal question presented here for review.

CONCLUSION

It is respectfully submitted that the Petitioner has failed to meet its burden of showing on the record that the decision below was not based on an adequate independent non-federal ground. Furthermore, the Petitioner has wholly failed to sustain its burden of establishing that a substantial federal question has been presented for review. The Supreme Court of Georgia correctly affirmed the trial court, and for these reasons and each and every reason presented above, Respondent respectfully requests that the writ of certiorari be denied.

Respectfully submitted,

ALLEN M. ALEXANDER, JR.
601 Southern Mutual Building
Athens, Georgia 30601

JOHN T. CROLEY, JR.
101 East Pine Street
P. O. Box 308
Fitzgerald, Georgia 31750

Attorneys for Respondent

Supreme Court, U. S.
FILED
FEB 6 1980
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-961

AMBASSADOR COLLEGE,
Petitioner,

vs.

SALLY J. GOETZKE,
Respondent.

PETITIONER'S REPLY MEMORANDUM

W. WARREN PLOWDEN, JR.
ERIC D. GRIFFIN, JR.
500 First National Bank Building
Macon, Georgia 31201
BEN B. MILLS, JR.
323 South Grant Street
Fitzgerald, Georgia 31750
Attorneys for Petitioner

R. L. MENDENHALL, INC., 926 Cherry Street, Kansas City, Mo. 64106, (816) 421-3030

TABLE OF AUTHORITIES

CASES

Chapman v. Crane, 123 U.S. 540 (1887) 2
Reynolds v. Reynolds, 217 Ga. 234, 123 S.E. 2d 115 (1961) 3
U. S. v. Ballard, 322 U.S. 78 (1944) 4
Young v. Ragen, 337 U.S. 235 (1949) 5
Zacchini v. Scripps-Howard Broadcasting Company, 433 U.S. 562 (1977) 6

In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-961

AMBASSADOR COLLEGE,
Petitioner,

vs.

SALLY J. GOETZKE,
Respondent.

PETITIONER'S REPLY MEMORANDUM

The Brief for Respondent in Opposition ("Resp. Brief") makes several misleading or mistaken assertions to which a short reply is warranted:

1. There is absolutely no basis for Respondent's argument that Petitioner failed to properly present a federal question to this Court for review. Petitioner, at the very first available opportunity, raised the constitutional issues at bar through its objections to Respondent's Interrogatories and Request for Production and has continued to maintain its right to refuse to answer this discovery on constitutional grounds throughout the proceedings in the trial court and before the Supreme Court of Georgia. *See* Petition for a Writ of Certiorari ("Cert. Petition") at 4-7. The Supreme Court of Georgia ignored Petitioner's assertion of the constitutional objections by treating Petitioner's objections as going to the *admissiblity* of the dis-

covery information at trial rather than going to its *production* in the first place. However, the evasion of the serious constitutional issues at hand by that court was no less a positive rejection of Petitioner's First Amendment assertions. As this Court has stated:

> "We are aware that a right or immunity set up or claimed under the Constitution or laws of the United States may be denied as well by evading a direct decision thereon as by positive action. If a federal question is fairly presented by the record, and its decision is actually necessary to the determination of the case, a judgment which rejects the claim, but avoids all reference to it, is as much against the right, within the meaning of [28 U.S.C. §1257] as if it had been specifically referred to and the right directly refused." *Chapman v. Crane,* 123 U.S. 540, 548 (1887).

2. Respondent also contends that it was unnecessary for the Supreme Court of Georgia to meet Petitioner's constitutional objections due to the existence of other adequate and independent non-federal grounds which authorized the affirmance of the trial court, principally, the alleged failure of Petitioner to timely file its objections to the discovery sought. Respondent, however, has raised the issue of the timeliness of Petitioner's objections at every stage in the trial court and as she states (Resp. Brief, p. 7) devoted a substantial portion of her brief to this subject in the Supreme Court of Georgia. She has nevertheless failed at every step to obtain a ruling that Petitioner's objections were anything but timely filed. In fact, the Supreme Court of Georgia rejected Respondent's timeliness argument and specifically held to the contrary:

> "The plaintiff filed interrogatories and a request for production of documents against the College. No discovery was filed against the individual defendants.

> *All three defendants timely answered.*" (Cert. Petition at A35). (Emphasis supplied)

3. Respondent alleges that Petitioner failed to make a threshold showing it is an entity entitled to assert First Amendment protection and that this constitutes an additional adequate state ground upon which the affirmance of the trial court was authorized. Related to this contention is her claim that Petitioner failed to establish its status as a "legitimate religious organization." There is is no basis in the record or the newspaper articles she cites for either contention.

The church-related status of Ambassador College was set forth in detail in response to Interrogatory No. 6 (R. 78) and a copy of its Articles of Incorporation was produced pursuant to request. These portions of the record clearly show the obvious religious standing of the College as the type of organization that is entitled to protection afforded individuals and churches by the Constitutions of the State of Georgia and the United States. Respondent made no attempt before the trial court to challenge Petitioner's assertion that it is a church-related college or to dispute the truthfulness of Petitioner's responses to her discovery.[1]

For the first time, however, in her Response in this Court, she makes the totally unfounded statement that

---

1. Petitioner's claim to church-related status is not rendered insufficient by the decision in *Reynolds v. Reynolds,* 217 Ga. 234, 123 S.E. 2d 115 (1961) as urged by Respondent. In fact, Respondent's reliance on *Reynolds* is grossly misplaced. There, the Supreme Court of Georgia merely held that in a divorce action the procedure whereby the plaintiff propounded written interrogatories to be answered by himself, with both the defendant and defendant's counsel excluded, was void and that the testimony of plaintiff was therefore without probative value.

Indeed, Petitioner is hard-pressed to determine what more it could have done to show its relationship to the World Wide Church of God other than truthfully answering under oath the questions asked by Respondent.

the main thrust of this litigation was to determine whether Petitioner is legitimate. The issue of whether religious beliefs are "legitimate" is simply non-justiciable. *U. S. v. Ballard,* 322 U.S. 78 (1944). Moreover, the question of whether or not officials of the Worldwide Church of God misappropriated church funds has no relationship whatsoever to this case and the claim by Respondent that her mother was the subject of religious "brainwashing" which induced her to make a deferred gift to Ambassador College.[2]

4. Respondent's attempt to extract language from the Supreme Court of Georgia opinion to show that the Court based its affirmance on the non-federal questions of timeliness of filing and evidentiary support for Petitioner's constitutional objections is simply unsupported by the opinion. An examination of the treatment by the Supreme Court of Georgia of Petitioner's constitutional objections reveals that the Court did not base its affirmance of the trial court on either of the grounds urged by Respondent. Rather its decision turned on relevancy and admissibility which it believed to be the only question which must be considered when ruling on constitutional objections to the discovery of information protected by the right of associational privacy and freedom of religion.

It stated:

"The appellant College argues that the disclosure sought would violate its constitutional rights of free exercise and non-establishment of religion; freedom of association; privacy and/or security in their per-

2. Respondent's obvious attempt to prejudice Petitioner before this Court is regrettable but nevertheless irrelevant. Her argument makes about as much sense as saying that General Motors is not a "legitimate" auto maker and, therefore, cannot assert otherwise appropriate defenses to a breach of warranty claim because its officials were accused in the press of improper conduct concerning an entirely unrelated matter.

sons, houses, paper and effects against unreasonable searches and seizures. Assuming that this appellant's objections were timely made and substantiated, *they relate primarily to the admissibility in evidence of such information.* The latter portion of Code Ann. §81A-126(b)(1), the first sentence of which was quoted hereinabove, is as follows: 'It is not ground for objection that information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.' *As the information here sought appears reasonably calculated to lead to the discovery of admissible evidence, and does not fall within any of the guidelines for entry of protective orders, it was not error to compel the discovery and grant the sanction for non-compliance therewith."* (Cert. Petition at A36). (Emphasis supplied)

The above-quoted holding of the Georgia Supreme Court clearly demonstrates that the constitutional assertions of Petitioner were effectively ignored by pigeonholing Petitioner's constitutional objections into the completely unrelated category of the scope of discovery. Nevertheless, the attempt by the Georgia Supreme Court to evade the troublesome constitutional issue before it in such a manner was a direct decision against Petitioner on the constitutional question presented.

Petitioner is aware of the decisions by this Court which hold that it will not review state court decisions which rest upon adequate and independent non-federal grounds. *Young v. Ragen,* 337 U.S. 235 (1949). However, as demonstrated above, this is simply not such a case. Respondent, at best, urges that the Georgia Supreme Court's affirmance of the trial court might possibly have rested on state law. However, the fact that

a state court might have, but did not, invoke state law does not foreclose jurisdiction in this Court. *Zacchini v. Scripps-Howard Broadcasting Company*, 433 U.S. 562 (1977).

CONCLUSION

For the foregoing reasons, and for the reasons stated in its earlier Petition, Petitioner respectfully urges the Court to grant a Writ of Certiorari, to reverse the decision below, and to remand the case to the Supreme Court of Georgia with appropriate instructions.

Respectfully submitted,

W. Warren Plowden, Jr.
Eric D. Griffin, Jr.
500 First National Bank Building
Macon, Georgia 31201
Ben B. Mills, Jr.
323 South Grant Street
Fitzgerald, Georgia 31750
Attorneys for Petitioner